



Public Service Commission

Public Service Commission
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Secretary

Three Empire State Plaza, Albany, NY 12223-1350
www.dps.ny.gov

April 21, 2017

Mark S. Lynch, President
New York State Electric & Gas Corporation
18 Link Drive
Binghamton, NY 13904

Re: Case 16-M-0610 – Comprehensive Management and Operations Audits of
New York State Electric & Gas Corporation and Rochester Gas and
Electric Corporation.

Dear Mr. Lynch:

At its Session on Thursday, April 20, 2017, the Commission selected Overland Consulting to conduct defined Comprehensive Management and Operations Audits of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation at a not-to-exceed cost of \$1,515,900.

Attached is the draft multi-party contract for the performance of the management and operations audits. You should coordinate with staff so that the contract is executed within 20 days of the date of this letter.

If you have any questions, please contact Ronald Vero at (518) 474-3137 or ronald.vero@dps.ny.gov or Angela Morina at (518) 486-2647 or angela.morina@dps.ny.gov.

Yours very truly,

/s/
Kathleen H. Burgess
Secretary

Attachment

CASE 16-M-0610

DRAFT

CONTRACT AMONG

NEW YORK STATE ELECTRIC & GAS CORPORATION

AND ROCHESTER GAS AND ELECTRIC CORPORATION

AND

OVERLAND CONSULTING

AND

NEW YORK STATE PUBLIC SERVICE COMMISSION

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This Contract for Comprehensive Management and Operations Audits (hereinafter "Audit") of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation, dated this xxth day of, 2017 in the City and County of Albany, State of New York, by and among New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation (hereinafter "the Utilities") with their principal places of business at 18 Link Drive, Binghamton, New York 13904 and 89 East Ave, Rochester, New York 14649 respectively, and xxxx Consulting (hereinafter "the Consultant") with its principal place of business at Street, xxx, xxx, and the New York State Public Service Commission (hereinafter "the Commission"), a New York State regulatory agency, with its principal place of business at Three Empire State Plaza, Albany, New York 12223 (collectively, hereinafter "the Parties").

WITNESSETH:

WHEREAS, pursuant to Section 66 (19)(a) of the Public Service Law, the Commission has selected the Consultant as an independent auditor to conduct an Audit of the Utilities; and,

WHEREAS, Section 66(19)(a) of the Public Service Law provides that the Commission has the authority to require the Utilities being audited to enter into a contract with the independent auditor selected by the Commission; and,

WHEREAS, the New York State Department of Public Service (hereinafter "the Department") has been duly designated by the Commission to act as its agent in the execution and completion of this Contract; and,

WHEREAS, the Consultant submitted a Proposal and a Cost Document, dated February 9, 2017 (hereinafter "the Proposal"), in response to the Request for Proposal, dated December 16, 2016 (hereinafter "the RFP"), for the Audit of the Utilities and was selected by the Commission to perform the Audit on the basis of the Proposal; and,

WHEREAS, the Consultant shall be required to work for, and under the direction of the Department in accordance with the Public Service Law, the RFP, the Proposal, the Consultant's Approved Final Work Plan, as described in Article VII, Section B, and the terms and conditions of this Contract; and,

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

ARTICLE I- SCOPE OF WORK

A. The Consultant shall perform the Audit as described in this Contract, the RFP, the Proposal, and the Final Work Plan, to be approved pursuant to Article VII, Section B hereof, for the not-to-exceed cost approved by the Commission as stated in Article VI, Section A of this Contract and in the Letter issued by the Secretary on April 21, 2017. The RFP, the Proposal, and the Approved Final Work Plan are to be considered incorporated by reference into this Contract.

B. Without limiting the foregoing, the Parties hereto expressly agree to the following terms and conditions:

- 1) The Consultant agrees that, for a period of three (3) years, from the date the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this Contract, and upon the request of the Department, the Consultant shall provide information and advice to the Commission on matters related to this Audit, and shall provide a witness or witnesses if requested to testify on matters related to this Audit, in any Commission proceeding or action to which the Department or the Commission is a party. The Parties agree that the Consultant shall be compensated by the Utilities for such work so provided at the Consultant's standard per diem rate for consulting services without any surcharge, and such charges shall be in addition to the amounts specified in Article VI, Section A hereof. The Consultant's obligation under this paragraph shall survive any termination of this Contract. If the Consultant is required to provide such support to the Commission under this Article, any documents necessary to fulfill such requirement shall be made available to the Commission and the Department in accordance with Article XIV.
- 2) So long as this Contract is in force and for a period of two (2) years thereafter, the Utilities shall not offer employment to or solicit, directly or indirectly, any employee of the Consultant who has worked on this Audit to leave the employment of the Consultant and work for the Utilities or any affiliated organization. So long as this Contract is in force and for a period of two (2) years thereafter, the Consultant shall not offer employment to or solicit, directly or indirectly, any employee of the Utilities or any employee of the

Department who has worked on this Audit, to leave their employment and work for the Consultant or any affiliated organization.

- 3) The Consultant agrees that the project team of experienced personnel identified in the Proposal will be organized and assigned to the Audit in such a manner that the Audit will be completed in a timely, competent and professional manner. Upon written notice to the Department and the Utilities, the Consultant may seek to substitute personnel with similar qualifications for those identified in the Proposal should any of the identified personnel terminate employment or become unavailable due to reasons beyond the Consultant's control. Changes in personnel or allocation of professional staff assigned to the Audit by the Consultant may be made only after a written request to the Department, with a copy to the Utilities, and upon the written consent of the Department, with a copy thereof sent to the Utilities.
- 4) The Consultant, its affiliated companies and any Audit subcontractor agree not to perform any work for the Utilities or any affiliated organization as defined in Public Service Law Section 110 without the written permission of the Commission during the period from the date of this Contract until two (2) years after the Department certifies the Consultant's completion of this Audit as defined in Article V, Section C of this Contract. Furthermore, the Consultant shall ensure that no members of the consultant team will perform any work for the Utilities, or any affiliated organization as defined in Public Service Law Section 110, without the written permission of the Department during the terms of this Contract and not until two (2) years after the Department certifies the Consultant's completion of the Audit as defined in Article V, Section C of this Contract.
- 5) The Consultant certifies that it, its affiliated companies, and its Audit subcontractors have disclosed all existing contracts or agreements with the Utilities or its affiliates. Further, the Consultant certifies that the same parties have disclosed to the Department all work performed for the Utilities or its affiliates within the past two (2) years preceding the date of this Contract.

ARTICLE II – CONTRACT ADMINISTRATION

All communications related to the Audit shall be directed to the Department's Project Manager. The Department designates Ronald Vero as its Project Manager. The Utilities designate xxx as their Project Manager. The Consultant designates xxx as its Project Manager.

The designated representatives shall have primary responsibility and authority on behalf of their respective parties to administer the Contract and to agree upon procedures for coordinating the efforts of the Utilities and the Consultant.

Press releases or other public statements concerning the Audit shall not be issued by the Consultant or the Utilities at any time prior to the Commission's approval of the Consultant's Final Audit Report other than acknowledging the ongoing nature of this Audit. After the Audit is completed, the Consultant and Utilities will obtain approval from the Department prior to issuing any press releases concerning the Audit.

ARTICLE III – SCHEDULING & COMPLETION OF WORK

The Audit shall be performed in accordance with the schedule set forth in this Contract, the Approved Work Plan, the Proposal, and the RFP. The Initial Draft Report of the Audit shall be completed by January 2018. A Final Written Report shall be submitted by March, 2018, subject to the timely submission of comments and factual accuracy revisions by the Department and the Utilities. The dates of the Initial Draft Report and Final Written Report may be modified pursuant to the process identified in Article VII. The Consultant may also be required to make a final presentation to the Department and/or Commission, and when directed by the Department, to the Utilities.

The Consultant agrees to conduct the Audit with promptness and diligence. The Utilities agree to make every reasonable attempt to schedule and coordinate meetings, interviews, and field trips and to provide requested documents so as to expedite prompt completion of this Audit without disruptions to their normal operations. The Consultant agrees to make every reasonable attempt to notify the Utilities at least one week in advance of interviews and site visits. The Consultant agrees not to schedule interviews or site visits on days the Department is not open for business. The Consultant shall notify the Department and the Utilities immediately in writing in the event unforeseen circumstances cause, or are likely to cause, delays in the performance schedule agreed to pursuant to the process identified in Article VII that would require schedule adjustments. Schedule adjustments shall be granted in

the event that delays are caused by the acts or omissions of the Department or the Utilities and/or which are beyond the control of the Consultant.

ARTICLE IV- COMPENSATION

Subject to the limitations of this Contract, the not-to-exceed price approved by the Commission, and the certification by the Department in accordance with Article V, Section B herein, the Utilities shall compensate the Consultant for all work and services performed by the Consultant or its approved subcontractors under this Contract on the following basis:

The Utilities shall compensate the Consultant for the necessary and reasonable time spent by each of its professional and support staff at the Fully Loaded Hourly Rates set forth in the attached Consultant's Proposal, as approved by the Department, subject to the provisions and limitations of Article VI herein. The Consultant certifies that the Standard Hourly Rates set forth in the Proposal do not exceed the current standard rates charged to its clients.

ARTICLE V- TERMS OF PAYMENT

The compensation provided for in Article IV, and as limited by Article VI, shall be paid by the Utilities to the Consultant in accordance with the following terms and conditions:

A. Compensation. The Consultant will submit detailed monthly invoices to the Department and the Utilities. Each invoice shall contain a detailed accounting of the hours worked within each task area by each employee of the Consultant for each day worked. The Consultant shall maintain detailed books, records and accounts, including without limitation, time sheets. The Consultant shall maintain receipts in excess of \$100 for any travel, transportation, or lodging expense related to this Audit. Such books, records, accounts, receipts and supporting documentation related to work performed and billed hereunder shall be preserved and made available within the State of New York to the Department for audit, upon reasonable request, for a period of two (2) years following the date the Department certifies the Consultant's completion of the Audit, as defined in Article V, Section C of this Contract. In the event of a dispute as to any amounts invoiced, all records with respect to such amounts shall be preserved by the Consultant until the dispute is finally resolved. The provisions of Article V, Section A shall survive the termination of the contract.

B. Payment. The Department shall complete the certification review of the invoices within fifteen (15) calendar days of receipt. Following the Department's review, the Department's Project Manager will issue a certification letter to the Utilities. The basis for the Department's certification shall be a finding that the fees are reasonable, necessary and correct, and billed in accordance with the provisions of this Contract. In the event there are items contested by the Department, the uncontested balance will be certified within the above mentioned period. The Utilities shall pay the certified amount within thirty (30) calendar days of its receipt of the Department's written certification. Payments are subject to the retentions set forth in Section C, below. Any and all payments by the Utilities hereunder, or certifications by the Department, will be without prejudice to the Department's right to conduct a further audit and protest or challenge at a later point in time such invoices and payments made. If examination discloses that the Utilities have paid for hours which have not in fact been worked, for services not in fact rendered in accordance with the Contract, or for travel, transportation or lodging expenses deemed unreasonable or unnecessary by the Department, the Consultant shall promptly refund to the Utilities an amount equal to any such excesses, plus reasonable interest.

C. Retention of Partial Payment. There shall be retained by the Utilities from each invoice, three retainages until certain milestones are met. These retainages are: 1) the Work Plan Retainage of five (5) percent; 2) the Report Retainage of ten (10) percent, and 3) the Contract Completion Retainage of ten (10) percent. From the beginning of the Audit, a total of twenty-five (25) percent of payments shall be retained by the Utilities from each invoice. Following the Department's written approval of the Work Plan, the amount retained from subsequent invoices will be reduced to twenty (20) percent and the Work Plan Retainage will be authorized for payment. Following the Department's written approval of the report, the amount retained from subsequent invoices will be reduced to ten (10) percent, and the Report Retainage will be authorized for payment. Following the Department's written notice that all deliverables have been provided and all of the Consultant's contractual obligations have been met, the Contract Completion Retainage will be authorized for payment.

D. Certification. Each invoice shall contain the following certification executed by the Consultant's Project Manager: "I certify that the above charges are correct and just, are billed in accordance with the Contract, have not previously been billed except as indicated, and that payment therefore has heretofore not been received."

E. Staff Out-of-State Travel. The operations of the Utilities, and their books and records, should be conducted and/or kept and maintained in New York State. Therefore, to the extent that the Audit tasks must be conducted outside of New York State, the Utilities will pay for all Department employee travel at U.S. General Services Administration Per Diem Rates guidelines for the appropriate county or counties by state (for mileage and per diem rates). In those cases where out-of-state travel by the Consultant and Department employees is necessary due to the records or personnel of the Utilities being outside of New York State, those costs will be borne entirely by the Utilities.

ARTICLE VI-COST CONTROL AND LIMITATION

A. Limits. The Consultant's compensation shall not exceed \$xxxx, or the corresponding amounts in the Proposal or any supplements or amendments thereto, except if modified as provided for in this Contract. The costs for providing advice or testimony regarding the Audit in accordance with Article I, Section B(1) of this Contract shall be in addition to the limits provided herein.

B. Adjustment of Compensation. The Consultant's compensation shall not exceed the amounts set forth above except upon the prior written consent of the Department and upon notice to the Utilities. If the Utilities disagree with the Department's determination, they shall have the right to submit the matter to the Commission for resolution pursuant to Article XII of this Contract. The Consultant shall exercise close control over costs. The Consultant agrees to use its best efforts to perform the work under this Contract as described in the Proposal and other directions of the Department consistent with the Approved Work Plan and the RFP, and to complete the Audit within the associated compensation and time limitations as specified in Article VII. The Consultant shall notify the Department in writing at any time it has reason to believe that the performance of the Audit hereunder will require any deviation from the Approved Work Plan, the Proposal, and/or the RFP. In the event the Consultant has reason to believe that the compensation limits set forth herein will require amendment, it shall promptly notify the Department in writing. The Department shall promptly notify the Utilities in writing before any action is taken. The Department will review all requested changes and, after consultation with the Utilities, will consider whether to seek approval of the Commission for changes. In the event of disapproval, the Consultant agrees to perform the Audit in accordance

with the Approved Work Plan, the Proposal, and the RFP for the agreed-upon cost, as stated in Section A of this Article.

C. Acceptance of Final Payment as Release. The acceptance by the Consultant of final payment hereunder shall operate as a general release to the Utilities and the Department of all of the Consultant's liens or claims arising in connection with this Contract. No payment, final or otherwise, shall operate to release the Consultant from any of its obligations under this Contract.

ARTICLE VII – WORK PLANS & REPORTS

A. Draft Work Plan. The Consultant agrees to confer with the Department in the development of a Draft Work Plan. The Draft Work Plan shall outline, in additional detail, the scope and methods to be employed by the Consultant during the course of the engagement as well as a detailed schedule (including milestones) for the remainder of the Audit.

B. Final Work Plan. The Consultant agrees to modify the Draft Work Plan, as appropriate, after giving due consideration to comments by the Department, and submit a final version of the Work Plan to the Department for approval. Approval of the Final Work Plan by the Department will authorize the Consultant to execute the tasks as stated therein.

C. Access to Work Plans. Nothing stated herein, express or implied, should be construed to confer a right upon the Utilities to have access to the Draft Work Plan or Final Work Plan at any time during the Audit or thereafter.

D. General Reports. The Consultant agrees to submit to the Department all the reports described herein, in the Approved Final Work Plan, and the RFP.

E. Progress Reports. The Consultant agrees to submit to the Department, with each monthly invoice, a written Monthly Progress Report consisting of the following:

- 1) A narrative briefly describing progress in relation to the project schedule as contained in the Approved Final Work Plan and an explanation for any discrepancies between the schedule and actual progress.
- 2) A list of interviews and site visits completed in the previous month.
- 3) A monthly report of hours expended, by activity, in each task area.
- 4) A report (log) showing documents requested, the date requested and date received.

- 5) Any emerging findings (as they are identified) that would, if adopted, improve the Utilities operations and performance.

F. Draft Report. The Consultant shall prepare an Initial Draft Report as set forth in the Approved Final Work Plan, the Proposal, and the RFP. An electronic version of the Initial Draft Report will be provided to the Department. Upon completion of review by the Department, and the incorporation by the Consultant of any resulting changes to the Initial Draft Report, the Department will direct the Consultant to provide the Revised Draft Report to the Utilities. Within ten (10) business days, or such additional period as established by the Department, after said submission, the Utilities will submit to the Department and the Consultant a written statement confirming that it has reviewed the Revised Draft Report for factual accuracy and the appropriate treatment of Confidential Information, describing the nature of identified factual errors, if any, and providing comments on the Revised Draft Report. If necessary, the Parties will meet to review the contents of the Revised Draft Report and to explain alleged factual errors. The Consultant, in consultation with the Department, shall give consideration to such comments, facts or other input, as necessary.

G. Final Report. Upon the Department's written approval of the Revised Draft Report, the Final Report will be prepared by the Consultant and presented to the Department. The Utilities will have an opportunity to submit comments on the Final Report to the Department before the Final Report is released to the public.

ARTICLE VIII – FORCE MAJEURE

The Parties hereto shall not be considered in default in the performance of their obligations under this Contract if said performance is prevented or delayed by any cause beyond the reasonable control of the party. Such instances, including, but not limited to, acts of God, acts of governmental authority, floods, strikes, explosions and riots, shall not relieve any party of liability if the party fails to use due diligence and take appropriate actions to remedy the situation. In the event a force majeure prevents or delays a party's performance, it shall promptly inform the other parties of same in writing.

ARTICLE IX – INSPECTION/RIGHT TO AUDIT

A. Inspection and Audit. The Department shall have the right to inspect and audit, upon ten (10) calendar days' notice, the Consultant's books and records as they relate to the Consultant's performance under this Contract, including any Audit-related travel expense

receipts as described in Article V, Section A. The Consultant shall provide proper facilities for such inspections and audits and shall provide access to the Audit work in progress. The fact that inspections or audits are made shall in no way relieve or release the Consultant from the obligation to perform and complete the Audit in accordance with this Contract. The Consultant's obligation under this Article shall continue and shall not be affected by any Department certification for payment or by actual payment by the Utilities. Any examination of the books and records or the work in progress shall be performed by the Department at its expense.

B. Subcontractor's Books and Records. The Consultant agrees to insert the substance of this Article, including this section, in all subcontracts, thereby giving the right to the Department to audit, at the consultant's expense, the books and records pertaining to any such subcontract. The books and records required of the subcontractor shall be as detailed as those required of the Consultant herein.

ARTICLE X – SUBCONTRACTING AND ASSIGNMENT

The Consultant is prohibited from assigning or subcontracting this Contract, or any part hereof, or any monies due or to become due hereunder, without the express written consent of the Department. The Department shall consult with the Utilities before consenting to any assignment or subcontract. Any assignment or subcontract made without the Department's consent shall be void. All subcontracts set forth in the Proposal shall incorporate the provisions of this Contract and be deemed approved concurrent with approval of this Contract. The Consultant certifies that all subcontractors, including those set forth in the Proposal are, and will be, so bound. No permitted assignment or subcontract shall release the Consultant from any obligations hereunder or affect any rights or remedies of the Department or the Utilities.

ARTICLE XI- MODIFICATIONS

A. Consultant Modifications. Consultant shall promptly notify the Department and the Utilities in writing at any time it has reason to believe that the performance of the Audit hereunder will require any deviation from the RFP, or the Approved Final Work Plan and its performance schedule agreed to in Article VII, and shall recommend such modifications as the Consultant believes are necessary. The Department, after consultation with the Utilities, shall grant such modifications as the Department finds necessary in the event that a delay has been

caused by the acts or omissions of the Department or the Utilities, or are beyond the control of the Consultant. The Department may otherwise grant such modifications in its discretion. If the Consultant believes the modifications it proposes require an amendment to compensation, it shall promptly submit compensation adjustments pursuant to Section C of this Article.

B. Department Modifications. The Department may propose to the Consultant, in writing, changes to the RFP, or the Approved Final Work Plan and its performance schedule in Article VII, for the Consultant's acceptance. The Consultant shall inform the Department and the Utilities in writing of any such acceptance of, or the basis for its objections to, a change proposed by the Department. If the Consultant believes modifications the Department proposes require an amendment to compensation, it shall promptly submit proposed compensation amendments pursuant to Section C of this Article.

C. Amendments to Compensation. See Article VI, Section B of the Contract.

D. Supplementation of Contract. Any modifications or amendments made under this Article shall be included as a supplement to this Contract.

ARTICLE XII - DISPUTES

Any disputes between the Utilities and the Consultant in the performance of this Contract shall be submitted to the Department for resolution within fourteen (14) days of the occurrence giving rise to the dispute. In the event the Utilities or the Consultant desire to dispute the Department's resolution, or a Department determination made pursuant to Article VI, Section B of this Contract, either may appeal the decision to the Commission. Pending the outcome of any such appeal, the Utilities agrees to perform all of its other, uncontested obligations hereunder pending the resolution of the dispute. The Consultant agrees to continue its work under this Contract notwithstanding the existence of a dispute or the fact that a dispute is resolved in a manner not satisfactory to the Consultant. In the event of a dispute, the Consultant, the Utilities, and the Commission shall retain all legal rights, remedies and authorities otherwise available under law.

ARTICLE XIII- STANDARD OF WORK/INDEPENDENT CONTRACTOR

The Consultant shall perform the Audit in a thorough and professional manner and shall be responsible to the Department for any failure to meet that standard. The Consultant agrees that in its performance of this Contract, it and its subcontractors shall be independent contractors and neither the Consultant nor any of the persons or firms employed by it shall be

deemed, for the purpose of Utilities and Department liability, to be the agents, representatives or employees of the Utilities or the Department.

ARTICLE XIV – USE OF INFORMATION & CONFIDENTIALITY

A. In the course of conducting the Audit, the Consultant may request that the Utilities provide, disclose, or make available information or material concerning the Utilities' conduct or practices which are within the scope of this Audit. The Utilities commit to cooperate in providing or making available to the Consultant such information or material as the Consultant may reasonably request in furtherance of the Audit.

B. The requested information or material may include information or material which: contains trade secrets, relates to physical or cyber security, or is proprietary or otherwise confidential in nature (hereafter referred to as "Confidential Information"). The Parties will provide for the protection of all Confidential Information provided to the Consultant by the Utilities.

C. When information asserted to be Confidential Information is in the possession of the Consultant, the Consultant's obligation to maintain the confidentiality of that information shall be as set forth in this Contract and in the incorporated Nondisclosure Contract (Appendix), which the Consultant will execute pursuant to this Contract. The information asserted to be Confidential Information which the Consultant possesses will not be "agency records" as defined in Public Officers Law §§ 86(3) and (4), and the Consultant is not intended to be and will not, for purposes of Public Officers Law § 86(3), be an agent of the Department.

D. If the Utilities are asked to provide information they assert to be confidential to the Consultant, they shall use the procedures set forth in the Nondisclosure Contract to designate the material as Confidential Information. All information asserted to be Confidential Information made available or disclosed to the Consultant by the Utilities, any of its directors, officers, agents or employees or by any of its affiliates or independent contractors or their directors, officers, agents or employees in connection with or related to the Audit shall be considered confidential, shall be held in strictest confidence, and shall be used only for the purpose of performing the Audit. The Consultant, except as provided in Section F of this Article, shall not distribute, disclose, or disseminate any information or data in any way, except to the Consultant's employees, its subcontractors or their employees with a definable need to know or use such information, without the prior written consent of the Utilities. As part of this

commitment, the Consultant agrees not to disclose information asserted to be Confidential Information provided by the Utilities as part of this Audit to any other utility without the written consent of the providing Utilities.

E. Information obtained from the Utilities that is not otherwise publicly available may not be published, disclosed or otherwise used by the Consultant for any purpose, which is not in furtherance of the regulatory objectives required by this Contract, without the written authorization of the Department and the Utilities.

F. All information and data made available to the Consultant by the Utilities to enable the Consultant to perform the Audit shall be made available, upon request, for review by the Department and shall be held available for inspection at the office of the Utilities in New York State. Upon the Department's request to the Utilities, copies of such information and data, or any portion thereof, will be supplied to the Department. With respect to any such information or data requested by the Department, the Utilities or the Consultant may request confidential treatment pursuant to 16 NYCRR § 6-1.3 and §89(5) of the Public Officers Law.

G. As set forth in the Approved Final Work Plan for the Audit, the Consultant may choose to post information and materials, including Confidential Information, at a secure website from which the Consultant, the Consultant's subcontractors, or the Department may review the posted materials.

H. Prior to final payment, the Consultant will certify in writing that no copies of documents designated by the Utilities as proprietary or confidential, or determined by the Commission to be trade secret, have been made or retained, whether by reproduction, by electronics, by photograph or by any other means.

I. Any Consultant-generated documents, including, but not limited to, interview summaries and Consultant meeting notes used by the Consultant as supporting documentation for the Final Report shall be regarded as Confidential Information and shall not be subject to disclosure except to the Department, or subject to release except as may be directed by the Department or otherwise be required by law. Such documents must be kept on site at the Consultant's office for no fewer than six (6) years after the completion of the Final Report and be made available for review by the Department upon request.

J. All hard copies of documents provided by the Utilities, and those provided by the Utilities in electronic format supporting the Final Report, must be delivered to and maintained by the Utility for no fewer than six (6) years after the completion of the Final

Report and be made available for review by the Department upon request. Prior to final payment, the Consultant will certify in writing that no copies (paper or otherwise) of work papers remain in the possession of or under the control of the Consultant with the exception of Consultant-generated documents described herein above. The Commission and the Department shall have the right to use any of these materials in the furtherance of their regulatory responsibilities in accordance with applicable provisions of law.

K. Neither the Consultant nor the Utilities shall release or disclose any draft, work papers, finding, conclusion or recommendation made by the Consultant, except as may be required by law. If the Consultant, the Department, or the Utilities alleges a legal requirement to disclose, it must provide written notice to the other Parties.

L. The above provisions relating to confidentiality shall not apply to information which is (a) at the time of disclosure generally available to the public, or (b) contained in the Consultant's Final Report after it has been released to the public by the Commission.

M. With certain specified exceptions, New York State's Freedom of Information Law (FOIL), Public Officers Law §§84-90, requires the Department to provide the public with copies of agency records upon request. Agency records include all information in any format that is submitted to an agency by a prospective agency contractor in support of its bid or proposal to contract with the agency to provide services or goods. Accordingly, the Consultant is hereby advised that the Proposal, and any other information provided by the Consultant in support of its response to the Department's RFP, will become an agency record. The Consultant is further advised that the Department could, in response to a request under FOIL, be required to make copies of the Proposal and other Consultant information available to the public. If the Consultant desires to keep confidential any information provided to the Department or to the Utilities, the Consultant must clearly identify the specific information that is claimed to be proprietary. A request for protection should be made to the Department Records Access Officer, and the Utilities as applicable, setting forth the reasons therefore. Any request for confidentiality will be subject to the requirements of FOIL.

ARTICLE XV - TERMINATION

The Department may terminate this Contract in whole or in part, with or without cause, upon fifteen (15) calendar days written notice to the Consultant and may terminate the Contract immediately for cause, by written or oral notice to the Consultant. If oral notice of termination for cause is given to the Consultant, written confirmation of the basis for termination shall be provided to the Consultant and the Utilities. Upon receipt of said termination notice, the Consultant shall stop all work specified in the notice and being performed hereunder; shall place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of any portion of the work not terminated; shall terminate all orders and subcontracts to the extent that they relate to the notice of termination, and shall take such action as the Department may direct for the protection, preservation, and disposition of property, the title to which the Department has or may acquire under this Contract. Upon the written consent of the Department and notice to the Utilities, the Consultant shall assign to the Department, in a manner and to the extent directed by the Department, all right, title, and interest of the Consultant under the orders and subcontracts so terminated. The Utilities shall, subject to the Department's approval, settle or pay all claims arising from terminated orders and subcontracts. The Utilities shall, subject to the Department's approval, pay the Consultant all reasonable fees and expenses which are reimbursable under this Contract and not paid prior to the effective date of the notice of termination. The Utilities shall also pay to the Consultant, upon certification by the Department, any reasonable costs attributable to the cancellation of this Contract. The Consultant shall make every reasonable effort to keep such costs and expenses to a minimum. After receipt of the Department's notice of termination, the Consultant shall submit its termination settlement claim promptly, but in no event later than ninety (90) calendar days from the effective date of termination. The Consultant shall not be entitled, in any event, to be paid monies in respect to costs, whether direct or indirect, fees, lost profits or otherwise for work not actually performed prior to the effective date of termination. Termination shall not relieve any party of any obligation that arose or may arise out of work performed prior to termination, and any obligation that survives this Contract.

All subcontracts and agreements that the Consultant enters into to accomplish the work under the terms of this Contract shall obligate such subcontractors to comply with the provisions set forth above.

ARTICLE XVI - INDEMNIFICATION

The Consultant hereby agrees to defend, indemnify and hold harmless the Utilities, the Department, and the Commission, and their agents, employees, officers, directors, successors and assigns, against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorney's fees, arising out of or in any way resulting from the Consultant's performance under this Contract, including, but not limited to, personal injury or property damage, including injury or damage to the person or property of the Department, the Utilities or the Consultant, its agents, employees, or subcontractors, and caused in whole or in part by any negligent or wrongful act or omission or due to statutory liability of the Consultant, its agents, employees, or subcontractors, and whether or not caused in whole or in part by any negligent or wrongful act or omission by the Utilities or the Department. Notwithstanding the foregoing, the Consultant is not required to indemnify or hold harmless the Utilities, the Department, or any third party of the Utilities or the Department, for the Utilities, the Department's or the third party's negligent or wrongful acts or omissions.

The Consultant, at its own expense, shall maintain liability insurance covering injury to or death of persons (\$2,000,000 general aggregate, \$1,000,000 per occurrence combined single limit), damage to property (\$2,000,000 general aggregate, \$1,000,000 each occurrence combined single limit), automobile (\$1,000,000 per occurrence single limit) and contractual liability, to insure the risks assumed by the Consultant under this Contract, and workers' compensation insurance in accordance with the statutory requirements of the State of New York. The Utilities, the Department, and the Commission shall be additional named insureds under the above liability policies and the Consultant shall furnish each with a certificate of insurance.

The obligations of the Consultant under this Article survive the termination of this Contract.

ARTICLE XVII – COMPLIANCE WITH LAW

The Consultant shall familiarize itself and comply with all applicable laws, ordinances, rules and regulations of all federal, state and municipal governments or the legally constituted agencies thereof.

ARTICLE XVIII- NOTICES

All written notices and other communications between the Parties shall be sufficient in all respects if sent via first class mail, respectively, to:

xxx
Electric Corporation
xxx
xxx, yy zzzzz

xxx
Consulting
Street
xxx, yy zzzzz

XXX
New York State Department of Public Service
3 Empire State Plaza
Albany, New York 12223-1350

Each party may, upon written notice, change the name of the person and/or the address to which such notices shall be directed. Communication by e-mail may be sufficient as agreed to by the Parties.

ARTICLE XIX - INTEGRATION

This Contract and the documents referenced herein constitute the entire Contract between the Parties. No changes, alterations, or modifications shall be effective unless in writing, signed by the duly authorized representatives of the Parties and approved as provided in Article XI, herein.

ARTICLE XX – UTILITY FURNISHED FACILITIES

The Utilities shall furnish, as reasonably needed and free of charge, suitable working space, a locking office and file facilities, computer, high speed internet access, printer, fax machine, photo copying machine and telephone facilities to the Consultant at the Utilities' offices. While in or on the Utilities' property, the Consultant agrees to: a) abide by the Utilities' operating and safety rules and procedures, b) plan, arrange and conduct its work such that, to the extent possible, there will be minimum interference with or interruption of the

continuous operation of the Utilities' business, and c) maintain the Utilities' working and office areas in a neat and professional manner.

ARTICLE XXI – COLLUSIVE BIDDING

The Consultant certifies that:

A. The prices in its Proposal were arrived at independently without collusion, consultation, communications or agreement with any bidder or with any competitor for the purpose of restricting competition.

B. Unless otherwise required by law, the prices so quoted and which form part of this Contract were not based on prices quoted by any other bidder or competitor and were not disclosed by the Consultant to any other bidder, directly or indirectly, prior to the opening of bids.

C. No attempt was made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

ARTICLE XXII- GRATUITIES

The Consultant, on behalf of itself and its subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to an employee of the Utilities or the Department, or to any family member or designee, associate or agent of an employee of the Utilities or the Department. The tendering of any such gratuity, payment, gift, service or item of value to any such employee or to any other family member or other designee, associate or agent of such employee, is an act of default and shall give rise to an immediate right of termination of this Contract by the Department. In addition, the Consultant will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value, whether such tendering is caused by the Consultant, its subcontractors, agents, servants or employees.

The Utilities, on behalf of itself and its subcontractors, agents, servants and employees, warrants that no gratuity, payment, gift, service or item of value has been or will be offered to the Consultant or its subcontractors, agents, servants and employees, or any family member or designee, associate or agent of the Consultant. The tendering of any such gratuity, payment, gift, service or item of value to any employees of the Consultant or any other family member

or other designee, associate or agent of any employees of the Consultant, is an act of default and shall give rise to an immediate right of termination by the Department of this Contract. In addition, the Utilities will be liable to the Commission for any damages, direct, indirect or consequential, as a result of the tendering of any such gratuity, payment, gift, service or item of value to a Consultant or to any other family member or other designee, associate or agent of any Consultant, whether such tendering is caused by the Consultant, its subcontractors, their agents, servants or employees.

ARTICLE XXIII- CONFLICTING DOCUMENTS

To the extent that any other document referenced herein or attached hereto conflicts with this Contract, any dispute will be resolved by giving precedence and control to the documents in the following order: (1) this Contract; (2) the Approved Work Plan; (3) the RFP; and (4) the Proposal.

ARTICLE XXIV – LIMITATION OF CONTRACT

Except as expressly provided herein, this Contract shall not constitute a waiver by the Utility, the Department or the Commission of any statutory or other legal rights, obligations or duties to which the Parties may otherwise be entitled or by which they may be bound.

ARTICLE XXV- EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

The Consultant shall comply with all Federal, State, and municipal laws and regulations relating to discrimination against employees or applicants for employment. The Consultant agrees to fully comply with the provisions of all laws, rules and regulations and policies referenced in the preceding paragraph and any amendments thereto. In addition, all subcontracts and agreements that are entered into by the Consultant under this Contract shall obligate such subcontractor to comply with the provisions set forth above. The Consultant and all subcontractors shall, upon request, submit to the Department and the Utilities compliance reports as may be reasonably required by the Department or the Utilities to show that the Consultant and each of its subcontractors have complied with the foregoing provisions.

The Department or the Utilities may take appropriate action as a result of any breach of the foregoing, including, but not limited to, immediate termination.

ARTICLE XXVI- SITUS/BINDING EFFECT

This Contract may be executed in counterpart originals and shall be deemed to have been executed in the City and County of Albany, State of New York. It shall, in all respects, be construed and governed in accordance with the laws of the State of New York and shall be binding upon the parties hereto, their successors and assigns when their respective counterpart has been executed.

IN WITNESS WHEREOF, the parties hereto have entered into this Contract as of the date first above written.

Utilities

By:
Title:
Date:

Consultant

By:
Title:
Date: