

EXHIBIT C

CHPE LLC AND CHPE PROPERTIES, INC.

AND

TOWN OF _____, NEW YORK

**ROAD USE AND CROSSING
AGREEMENT FOR THE
CHAMPLAIN HUDSON POWER EXPRESS ELECTRIC
TRANSMISSION CABLE SYSTEM CROSSING**

DATED _____, **202**

ADDRESS: _____, New York _____

CITY/VILLAGE/TOWN: _____

COUNTY: _____

STATE: New York

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement (“Agreement”), entered into this ___ day of ___, 202_ by and between CHPE LLC and its wholly-owned subsidiary CHPE PROPERTIES, INC. (collectively, “CHPE”) having offices at 600 Broadway, Albany, New York 12207 and the Town of _____, New York (the “Town”) having offices at _____, New York _____.

RECITALS:

WHEREAS, CHPE intends to construct and operate a buried 1,250 megawatt High Voltage Direct Current electric transmission facility consisting of two solid-state cables and related equipment and appurtenances (“Project”) pursuant to the Certificate of Environmental Capability and Public Need granted to CHPE by the New York State Public Service Commission (“PSC”) on April 20, 2013 (as amended from time to time, the “Certificate”), the Project’s Environmental

Management and Construction Plan (as amended from time to time, “EM&CP”) to be approved by the PSC in due course, and other permits and authorizations to conduct certain related activities, including Project construction and Project restoration activities as provided for herein (collectively, “Project Activities”); and

WHEREAS, in order to accomplish Project Activities within the Town, CHPE needs to install and operate buried Project cables in and under a certain Town road known as _____, as shown on the maps attached hereto as Exhibit A (the “Road”); and

WHEREAS, on _____, 2021, the Board consented to the undertaking of Project Activities involving the Road through the adoption of Resolution _____, a copy of which is attached hereto as Exhibit B, conditioning its action on the finalization and execution of this Agreement in due course and attaching a draft of the same to such resolution (the “Resolution”); and

WHEREAS, the Town has must have assurances from CHPE that CHPE will pay and/or otherwise indemnify the Town for any damage to the Road and any access roads or streets used or traversed by CHPE or its contractors to access the work site for installation of the cable in and under the Road and/or arising from or related to Project construction, maintenance, and occupancy activities; and

WHEREAS, the Resolution authorized the Town Supervisor to enter into and execute this Agreement:

NOW, THEREFORE, in consideration of the premises set forth in the recitals above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CHPE and the Town, each intending to be legally bound, agree as follows:

1. Rights Granted.

a. The Town hereby acknowledges and confirms its consent to CHPE in accordance with Section 11(3) of the New York State Transportation Corporations Law, to lay down, construct and maintain wires, conductors, conduits and other fixtures in and under the Road in the Town in accordance with the provisions of this Agreement.

2. CHPE Construction Responsibilities.

a. CHPE shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to undertake Project Activities affecting the Road.

b. CHPE shall be responsible for ensuring that all debris, garbage, and waste generated by Project Activities are immediately cleaned up and properly are disposed of.

c. CHPE shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic on any Town road except, under severe hardship, a temporary closure lasting no more than four (4) hours. Temporary single lane closures will be permitted periodically during Project

Activities taking into account all of the pertinent circumstances, with close coordination with the Town's Highway Department.

d. CHPE shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and subcontractors will comply with the terms and conditions of this Agreement.

e. CHPE will examine existing conditions and traffic flow and volume patterns to determine the appropriate construction methods for the Road prior to commencing construction. CHPE shall, at least two (2) days prior to commencing construction in the Road, meet with the Superintendent of Highways of the Town and explain the construction process and timing and the measures CHPE will undertake to ensure minimum disruption to the traveling public and the Town's Highway Department, and minimize the duration of any Road closure. Where in-road work will be extensive enough to require detours or road closings, a Traffic Control Plan will be completed in consultation with the Town's Highway Department prior to the start of construction. All work zone traffic control ("WZTC") will be done in conformance with New York State Department of Transportation ("NYSDOT") Standard Specifications.

f. CHPE shall plate over any open trenches during non-working hours. CHPE shall not permit any excavation to be made in or upon any Road to remain open or uncovered either day or night, without causing the same to be properly barricaded by day and night and, in addition thereto, CHPE shall place at such location signage, flares, red lanterns, or other warning devices by night so as to properly warn all persons of the danger of such excavation. All active and inactive work zones shall be provided with adequate WZTC for the duration of the work within the Road.

3. Road Surveys and Routes.

a. CHPE will review the final Project route with the Town's Engineer or designee. Additionally, CHPE will also consult with the Town Engineer or designee to finalize a list of roads that CHPE will utilize in connection with Project Activities (together with the Road, "Affected Roads").

b. Prior to CHPE undertaking any Project Activities, CHPE shall provide the Town with final PSC-approved EM&CP involving the Affected Roads. These shall serve as the basis for the required bonding set forth herein.

c. At least five (5) days prior to the commencement of Project Activities involving the Affected Roads, CHPE shall prepare and provide to the Town a pre-construction video survey of the same, which video survey must be acceptable to the Town in its reasonable discretion.

d. If, in the opinion of the Town's Engineer or designee, the conditions of an Affected Road change after the date of this Agreement and before the start of Project construction activities such that any such Affected Road intended to be used for access purposes cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Project Activities, the Town will so notify CHPE and include in its notice the improvements that would be necessary for CHPE to use the same. CHPE will have five (5) business days from its receipt of such notice to notify the Town as to whether it can make alternate route arrangements.

- i. If CHPE notifies the Town that it can make alternate route arrangements, CHPE will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify CHPE within three (3) business days from its receipt of such alternate proposed route whether or not that proposed route is reasonably satisfactory to the Town. If the proposed alternate route is not reasonably satisfactory to the Town, then CHPE and the Town will repeat the above process until an alternate route that is reasonably satisfactory to both parties is agreed upon.
 - ii. If CHPE notifies the Town that it cannot make alternate route arrangements, then CHPE will make the improvements described in the Town's initial notice of changed conditions, which repairs will be at CHPE's cost and completed before the onset of Project Activities.
- e. If, during the term of this Agreement, the Town's Engineer or designee believes that the condition of any Affected Road has changed after the start of Project construction activities such that the road cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the Town will so notify CHPE and include in its notice the improvements that would be necessary for CHPE to continue using such road. CHPE will have five business days from its receipt of such notice to decide if it can make alternate route arrangements.
- i. If CHPE notifies the Town that it can make alternate route arrangements, CHPE will include in its notice to the Town a map and description of its proposed alternate route. The Town must notify CHPE within three (3) business days from its receipt of such alternate proposed route whether or not that proposed route is reasonably satisfactory to the Town. If the proposed alternate route is not reasonably satisfactory to the Town, then CHPE and the Town will repeat the above process until an alternate route that is reasonably satisfactory to both parties is agreed upon.
 - ii. If CHPE notifies the Town that it cannot make alternate route arrangements, then CHPE will make the improvements described in the Town's initial notice of changed conditions, which repairs will be at CHPE's cost and completed before the resumption of Project Activities.
- f. Promptly following the substantial completion of Project Activities within the Town, CHPE shall prepare and provide to the Town a post-construction video survey of the Affected Roads be acceptable to the Town in its reasonable discretion. After CHPE has completed Project Activities within the Town, CHPE will not use any heavy machinery that would cause damage to Town roads, unless authorized by the Town.
- g. In the event that the Town Engineer believes that Project Activities have deviated from the PSC-approved EM&CP routing within the Town without prior written permission from the Town, CHPE shall, upon notification from the Town, suspend Project Activities unless and until the Construction Inspector provided for at Condition 53(a) of the Certificate has determined that the Project Activities do not in fact deviate from the PSC-approved EM&CP.

4. Road Restoration and Repair of Damage.

a. The standard to be achieved by CHPE in pursuing Project Activities is the return of any Affected Road to its original condition as nearly as practicable and, in all events, to restore full service and functionality of affected roads as soon as reasonably practicable, but no later than sixty (60) days from the date the Town sends notice requesting any repairs.

b. Within thirty (30) days of the date upon which CHPE has completed the comprehensive closing on the debt and/or equity financing that will fund Project construction (the "Closing"), and in any and all events before the commencement of any Project Activities, CHPE shall provide the Town with a payment of \$ _____ (the "Deposit") that the Town shall deposit into an escrow account ("Account"). Of the \$ _____ Deposit, \$ _____ shall be non-refundable. The Town may only withdraw funds from the Account to pay for the incremental and out-of-pocket costs, fees, expenses and other bills rendered to or incurred by the Town in connection with: (i) the approval of proposed use of Affected Roads and the assessment of whether the same are suitable for use by heavy equipment; (ii) the Town's monitoring of Project Activities and the performance of its functions as provided for by this Agreement, including payment of any Town Designated Engineer ("TDE") employed by the Town to assess road conditions before and after use by CHPE and its contractors with oversized or heavy equipment, and assessment of any damage to the Affected Roads caused by the Project Activities; (iii) payment for materials and contractors needed to repair, on an emergency basis, any Affected Roads damaged or unsafe conditions caused by Project Activities. The Town shall provide an itemized statement, together with detailed backup, of any deduction from the Account. If at any time the balance in the Account is reduced to one-third or less of its initial amount, the Town Clerk shall so advise CHPE and CHPE shall deposit additional funds in the Account to bring its balance up to the amount of the initial deposit.

c. Within fifteen (15) business days of the date upon which CHPE notifies the Town that it has completed the initial re-seeding that CHPE will undertake as part of its Project Activities, the Town must notify CHPE in writing if it believes any significant residual damage to the Affected Roads exist and were caused by Project Activities. Damage may include but is not limited to cracking, imprinting, pitting, tracking, buckling or asphalt and road base damage, damage to culverts, bridges and/or drainage facilities ("residual project damage").

d. Within 10 business days of receipt of an allegation of residual project damage from the Town, CHPE shall notify the Town in writing of its agreement or disagreement with the allegations. If CHPE accepts responsibility, it will proceed with due diligence to rectify the condition. If CHPE declines to accept responsibility, the Town shall then submit a written invoice ("damage invoice") to CHPE, detailing estimates of the costs, fees, and/or expenses incurred or to be incurred by the Town to repair the residual project damage.

e. CHPE may elect in its sole discretion either to pay the amount set forth in the damage invoice accompanying the Town's notice, as liquidated damages. In such event, CHPE shall notify the Town in writing of its election, and pay the amount within ten (10) business days of receipt of the invoice. If paid in full, the Town will have no further claim against CHPE in connection with residual project damage.

f. The manner of repair of any residual project damage by either party shall be in accordance with official industry standards with New York State Department of Transportation and/or municipal requirements that are applicable for the type of road and restoration involved.

g. Any excess amount remaining in the Account, following the completion of Project Activities, shall be returned to CHPE or its assignee.

5. Ongoing Cooperation.

The Town commits to the taking of such further actions, if and when reasonably requested by CHPE and consistent with applicable law, as may facilitate the successful achievement of the Project, including, without limitation, the terms and conditions of this Agreement.

6. Bonding.

a. Prior to the commencement of any Project Activities, CHPE shall obtain and deliver to the Town a performance bond ("Bond"), which amount is to be calculated based upon the length and types of the Affected Roads and sufficient to satisfy the Town's standard bonding requirements for road use and road excavation. The Bond shall be in the minimum sum of \$ _____. The Bond shall be executed by a reliable bonding or insurance institution with an A or higher rating, and authorized to do business in the State of New York. The surety selected must be approved by the Town in its reasonable discretion. A form of bond acceptable to the Town is attached to this Agreement as Exhibit C.

b. The Bond shall remain in full force and effect in the stated amount for a period of 3 months after CHPE's completion of all Project Activities.

c. CHPE shall be listed as principal in the Bond, as obligee, and the Bond shall oblige CHPE to comply with the terms and conditions of this Agreement. The original Bond shall be delivered to the Town Clerk.

d. The purpose of the Bond and deposit is to guarantee reimbursement to the Town for all labor, material, equipment, expenses and attorneys' fees the Town may incur in repairing any residual project damage, to the extent that (i) CHPE's liability for the same has been finally adjudicated, (ii) CHPE has failed to pay the ordered judgment, and (iii) applicable insurance is unavailable to reimburse the Town for the aforesaid expenses.

7. Indemnification and Insurance.

a. CHPE, at its own expense, agrees to the insurance, indemnification and general terms and conditions set forth herein.

b. CHPE shall present to the Town Certificates of Insurance evidencing the acquisition of liability insurance coverage naming the Town as additional insured, on a primary noncontributory basis, in the amount of at least:

- i. \$1,000,000 per occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products and Completed Operations Aggregate. Death/Bodily Injury: \$1,000,000 per person; \$2,000,000 aggregate.
- ii. Coverage shall include contractual liability.
- iii. Property Damage: \$500,000.
- iv. Coverage provided shall be written on a primary and non-contributory basis over any other insurance that may be available.
- v. All policies shall contain a waiver of subrogation.
- vi. No policy shall exclude coverage for lawsuits alleging violations of New York Labor Law, sections 200, 240(1) a/k/a Scaffold Law and 241(6).
- vii. All policies shall be written with an insurance carrier with a Best's rating of A- or better.

c. Said insurance shall be maintained throughout the period during which Project Activities take place and the aforementioned certificate shall provide for a minimum of fifteen (15) business days' written notice to the Town prior to cancellation of coverage [with the exception of non-payment of premium in which case the statutory cancellation clause shall apply].

d. To the extent permitted by the governing law, CHPE shall defend, indemnify, protect, save, and hold the Town harmless from and against any and all penalties, fines, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or award of damages, whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of, or are caused by, the Project Activities, whether undertaken by CHPE or its contractors or consultants, or any of the right conferred by this Agreement except to the extent any such claims, suits, demands, causes of action, or award of damages relate to the negligence or willful misconduct of the Town or any of its officers, boards, employees, committee members, attorneys, agents, consultants, vendors, contractors and subcontractors. The obligation of CHPE to indemnify and save harmless the Town shall extend to the employees, officers, elected officials, and consultants hired by the Town.

8. Captions and Headings.

Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

9. Modifications.

This Agreement cannot be amended, modified, or changed orally, but only by agreement in writing signed by the parties.

10. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null, void, voidable, or unenforceable, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which remainder shall remain in full force and effect. The waiver by any party hereto or a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation. No waiver is valid unless in writing and signed by party making the waiver. The parties reserve all of their rights and remedies under this Agreement, at law and at equity, including, without limitation, any such rights and remedies under the New York Public Service Law, the New York Eminent Domain Procedure Law, and the New York Transportation Corporations Law.

11. Governing Law; Consent to Jurisdiction.

a. This Agreement shall be governed and construed in accordance with the laws of the State of New York, as in effect from time to time without regard to principles of conflicts of laws.

b. Each party represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Agreement shall be in effect.

12. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Except as set forth in the preceding sentence, nothing in this Agreement is intended to be for, or to inure to the benefit of, any person other than the parties hereto, and their respective successors and assigns.

13. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

14. Counterparts.

This Agreement may be executed by electronic signature and transmitted by fax or email in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

15. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

16. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given upon hand delivery, upon the third day following delivery via the United States Postal Service, on the first day following delivery via a nationally registered United States overnight courier service, or on the day when telecopies are sent by facsimile transmission if additional notice is also given under one of the previous three methods within three (3) business days thereafter. For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below.

For CHPE:

Champlain Hudson Power Express, Inc.
600 Broadway, Pieter Schuyler Building
Albany, NY 12207
Attn: General Counsel

For Town:

Town Board of the Town of _____
Town Hall

_____, New York _____
Attn: Supervisor

17. Assignment.

Neither Party may assign its rights or its obligations under this Agreement in whole or in part without the prior written consent of the other Party, which consent shall not be unreasonably withheld conditioned, or delayed; except no consent of any kind shall be required in the case of an assignment by CHPE (i) in favor of a secured lender or lenders participating in the Closing, (ii) as part of a straight lease arrangement authorized by the General Municipal Law realign to Industrial Development Agencies, or (iii) to a company affiliated with CHPE.

IN WITNESS WHEREOF, CHPE and the Town have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

TOWN OF _____,
NEW YORK

By: _____

CHPE LLC

By: _____

CHPE PROPERTIES, INC.

DRAFT

EXHIBIT A
AFFECTED ROAD(S)

DRAFT

**EXHIBIT B
RESOLUTION**

DRAFT

**EXHIBIT C
FORM OF BOND**

DRAFT