



**NATIONAL GRID AGREEMENT**

**PURCHASE ORDER NO. 0000143604**

**BETWEEN**

**NATIONAL GRID CORPORATE SERVICES LLC,  
NATIONAL GRID USA SERVICE COMPANY, INC.**

**AND**

**BALLARD CONSTRUCTION, INC.**

**FOR**

**PAVING RESTORATION SERVICES**

**IN THE SYRACUSE TERRITORY OF**

**THE CENTRAL UPSTATE NEW YORK REGION**

**AGREEMENT**

This Agreement, made and entered into on the date when signed by the Party signing last in time, by and between National Grid Corporate Services LLC, a New York corporation with offices at 175 East Old Country Road, Hicksville, New York 11801; and National Grid USA Service Company, Inc., a Massachusetts corporation, with offices at 40 Sylvan Road, Waltham, Massachusetts 02451; each a National Grid company (each a “Company”), and Ballard Construction, Inc. (Contractor), a New York corporation, having its principal place of business at 320 Bridge Street, Syracuse, New York 13209 (each a Party and collectively the Parties), for the Work identified as:

NATIONAL GRID  
PAVING RESTORATION SERVICES  
SYRACUSE TERRITORY IN NEW YORK  
PO # 143604

**ARTICLE 1 - SCOPE OF WORK**

A. During the term of this Agreement, the Company will issue Work Authorization Forms or Releases to the Contractor for the Contractor’s performance of Work to perform paving and/or landscape restoration services (the “Services”) in various locations in New England and/or New York. The Contractor hereby agrees to perform the Work and to provide all materials, equipment, apparatus, tools, labor, Services, and facilities (to the extent not specified elsewhere in the Agreement as furnished by others) and to do all things necessary to provide Services in various locations within the Contractor’s assigned Area of Responsibility, all in accordance with this Agreement.

B. The Contractor hereby agrees to perform Services under this Agreement. Work is not guaranteed for the period of the contract period.

C. The Contractor shall be authorized to perform specific work only upon Contractor’s return to Company’s designated representative of a Work Authorization Form or Release executed by an officer of Contractor or other duly authorized individual. The Work Authorization Form provided to Contractor by Company shall identify the National Grid company for which the Work shall be performed and that National Grid company shall be the

“Company”, for purposes of this Agreement and such Work. The Work Authorization Form when fully executed shall become a Contract Document.

D. It is recognized by the Parties to the Agreement that there may be times when emergency Work is required to be performed at the Company’s direction.

E. The Company does not guarantee the Contractor any level or quantity of Work pursuant to this Agreement and the Contractor recognizes that there is no obligation to award any Work or any specific quantity of Work to the Contractor. Furthermore, the Company reserves the express right to award Work to third Parties or to perform Work utilizing Company crews. The Company further reserves the right to competitively bid Projects within the scope of this Agreement and may request the Contractor to prepare a bid for such Project related Work and upon the award of such Work to Contractor, to perform such Work under this Agreement.

The designation of Contractor as a provider in specified Areas of Responsibility in no way gives the Contractor exclusive rights to work performed in the designated Area of Responsibility. The boundaries of the Contractor’s Area of Responsibility may change from time to time due to resource availability and/or work requirements and will be determined at the sole discretion of the Company. The Company has at its discretion the right to award any work to any contractor.

## **ARTICLE 2 - CONTRACT DOCUMENTS**

The following documents, including all schedules, appendices, exhibits or other attachments to such documents, are incorporated by reference as if fully set forth herein, and are hereinafter referred to collectively as the Agreement and individually as "Contract Documents" or the “Agreement”:

1. This Agreement
2. Schedule A, Specification titled, “National Grid Upstate New York Service Territories Paving Restoration / Landscaping Contract Specifications dated April 2011.”
3. Schedule B, Pricing Workbook
4. Schedule C, National Grid Terms & Conditions for Construction Purchase Orders,

dated 8/6/08 (“Terms and Conditions”)

The provisions of this Agreement are intended to be complementary and consistent. If, however, there is any conflict or discrepancy between among the documents that comprise the Contract Documents, the order of precedence for resolving such conflict or discrepancy will be the sequential order of the documents in as listed above (“Order of Precedence”). If the Order of Precedence does not resolve any such conflict or discrepancy, the Engineer’s determination of such conflict or discrepancy shall be final and conclusive. Capitalized terms in the Contract Documents are defined in the attached Terms and Conditions unless specified otherwise.

### **ARTICLE 3 - TERM**

This Agreement shall be effective beginning on May 1, 2011, or when the Agreement is executed by all Parties, whichever occurs last in time. It shall continue in full force and effect until March 31,2012, or in accordance with the provision of Article 3.0 of the Terms and Conditions, and as set forth below.

At the option of the Company, this Agreement may be extended for one (1) or two (2) year periods by written amendment signed by the Parties. The Company will communicate its intent to exercise such option by written notice to the Contractor ninety (90) days or more prior to the expiration of the then current term.

Whether the Agreement is extended as provided for above or not, for Work being performed under a Work Authorization issued within the term of the Agreement, this Agreement shall continue in full force and effect in relation to such Work until the date that such Work is completed.

All warranties provided for in this Agreement shall remain in full force and effect until their stated expiration.

**ARTICLE 4 - SCHEDULE**

Any Work to be performed under this Agreement shall be commenced on the date specified in the relevant Work Authorization Form, and shall be completed in accordance with the schedule developed by the Contractor and accepted by the Company. The Contractor shall prepare updated schedules as may be requested by the Company from time to time.

**ARTICLE 5 – OWNERSHIP**

Notwithstanding anything to the contrary in any Contract Document, each Work Authorization Form issued pursuant to this Agreement shall be a separate agreement incorporating the terms of this Agreement and the Contract Documents.

In the event that a Work Authorization Form specifically identifies the National Grid Company(ies) for which the Work is performed (a “Company-Specific Item”), the National Grid Company(ies) so identified shall be the only “Company” with regard to such Company-Specific Item and Contractor acknowledges and agrees that only the National Grid Company that is the Company with regard to a Company-Specific Item may be liable to the Contractor in any way arising out of or related to such item. Without limiting the foregoing, Contractor acknowledges and agrees that a National Grid Company that is not the Company with regard to a Company-Specific Item shall in no event be liable to Contractor for damages to any entity arising out of work related to such item, nor shall such National Grid Company be liable to pay Contractor for any work done in relation to such item. In the event that a Work Authorization Form identifies multiple National Grid Companies as the entities for which the Work is performed, each company shall be a “Company” with regard to such Work and that any liability related thereto shall be several and not joint.

Without limiting the foregoing, Contractor acknowledges that any termination right or other right it may acquire due to the performance or non-performance of a particular Company shall only apply with regard to such Company, and shall not give Contractor a termination right or other rights against the other Company(ies).

## **ARTICLE 6 - CONTRACT PRICE**

The Company will pay the Contractor for the segment of spend as stated in Schedule B attached hereto.

The Contract Price shall be adjusted for additions, deletions or changes to the Work as set forth in Section 10.1 of the Terms and Conditions.

## **ARTICLE 7 – SALES & USE TAXES**

If the Work under this Agreement is performed in New York State and is classified as Capital Improvement to Real Property under the NYS Sales Tax law, the Contractor is liable for paying all applicable New York State and local sales tax and this cost is included in the Contract Price.

The Company will provide a Certificate of Capital Improvement (Form ST-124).

If the Work under this Agreement is performed in Massachusetts and is “directly and exclusively” used in furnishing gas and electricity, in accordance with Massachusetts Sales Tax law, labor, materials, equipment and supplies that the Contractor acquires and uses to complete the work qualify as tax exempt under the T&D Exception. The Contractor may issue an Exempt Use Certificate (Form ST-12) or request one from the Company.

Most, if not all, of the Work in Massachusetts and Rhode Island is considered a “Construction Contract” and thus the Contractor is liable for paying all applicable sales tax.

## **ARTICLE 8 - PAYMENTS**

Unless otherwise indicated in the relevant Work Authorization Form, not later than the fifth Day of each month the Contractor shall submit to the Company its invoice and support documentation, in a form acceptable to the Company, for the Work completed through the last Day of the preceding month. Invoices shall contain appropriate supporting documentation as requested and set forth more fully elsewhere in the Contract Documents and relevant Work Authorization Form.

For Time and Material Work, each invoice shall include the actual verifiable quantity of labor and equipment time expended in performing the Work, the actual verifiable quantity of Materials or equipment supplied to the Project, and actual and verifiable costs for rented equipment and Subcontractors. The measurement and value of the invoiced quantities and costs shall be determined in accordance with Schedule B attached hereto. Each such invoice shall include back up documentation as requested in the Specification and relevant Work Authorization Form.

All invoices shall be submitted and payments made in accordance with and subject to the Terms and Conditions.

All paper invoices shall be submitted to:

Contractor shall submit invoices for work completed, accepted and approved by National Grid. Contractor must reference the National Grid Purchase Order Number on all invoices. All payments are subject to National Grid's Document No. 00700 entitled, "NATIONAL GRID AND AFFILIATED COMPANIES TERMS AND CONDITIONS FOR CONSTRUCTION PURCHASE ORDERS" (08/06/08). Each individual invoice must be addressed to the individual affiliate (i.e. National Grid Corporate Services LLC or National Grid USA Service Company, Inc.) for which the work was performed.

*Send Original Invoice to:*

The Affiliates Name – see above  
Accounts Payable Dept.- Building C-1  
300 Erie Boulevard West  
Syracuse, NY 13202

*Send Copy of Invoice & Backup to:*

National Grid's Paving Representative in the  
Region  
To Representative's address

All invoices shall reference:

Purchase Order Number  
Work Authorization Number  
Work Request Number  
Contractor's invoice number  
Field Construction Coordinator's Name (as shown on the WAF)  
Billing date  
Description of pay items  
Change Orders

**Electronic Invoicing**

National Grid reserves the right to employ an electronic invoicing system with the Contractor at any time during the life of the contract, and the contractor shall be required to comply with the process and data requirements of that system.

**ARTICLE 10 – NOTICES AND COMPANY CONTACTS**

Notices, demands, requests and other communications required or permitted under this Agreement shall be addressed to:

*Contractor:*

Ballard Construction, Inc.

320 Bridge Street

Syracuse, New York 13209

Attention: William Ballard

*Company:*

National Grid

175 East Old Country Road

Hicksville, New York 11801

Attention: Mr. David F. Tedesco

*with a copy to:*

National Grid

General Counsel

One MetroTech Center

Brooklyn, New York 11201

Commercial matters including inquiries regarding Agreement terms and conditions, modifications to this Agreement and negotiation of changes shall be addressed to:

National Grid

David F. Tedesco, Sr. Buyer, Procurement

175 East Old Country Road

Hicksville, NY 11801

No changes to this Agreement, will be binding on the Company without prior written approval of National Grid Procurement.

Technical/site related matters shall be addressed to the Company's Field Representative identified on the relevant Work Authorization.

#### **ARTICLE 11 – PERFORMANCE MANAGEMENT PROGRAM**

*Contractor and Company will work to develop Contract Management Performance Program to better define Agreement objectives, provide a method by which the Contractor's performance of Work will be measured and evaluated, and define the consequence of the results.*

#### **ARTICLE 12 - ENTIRE AGREEMENT**

This Agreement, including all Contract Documents, constitutes the entire Agreement between each National Grid Company and the Contractor, with respect to the Work specified, and all previous representations relative thereto, either written or oral are hereby annulled and superseded. No modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each Party hereto.



IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed by its duly authorized representative on the day and year set forth below.

National Grid Corporate Services LLC

National Grid USA Service Company, Inc.

Contractor

By: \_\_\_\_\_

By: \_\_\_\_\_

Ross W. Turrini

Title: Vice President, Procurement

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

