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**PROJECT AGREEMENT**

Between

**CHPE LLC**

and

**ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

Dated as of November 1, 2021

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This Table of Contents is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provisions of this Project Agreement.

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## **PROJECT AGREEMENT**

THIS PROJECT AGREEMENT, dated as of November 1, 2021 (the “Agreement”), is between the ESSEX COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a public benefit corporation organized and existing under the laws of the State of New York (the “State”), duly organized and existing under the laws of the State, with principal offices located at 7566 Court Street, PO Box 217, Elizabethtown, New York 12932, and CHPE LLC, a New York limited liability company (the “Company”), with principal offices located at 600 Broadway, Albany, New York 12207.

## **WITNESSETH**

WHEREAS, the New York State Industrial Development Agency Act (the “Enabling Act”, hereinafter defined), constituting Title 1 of Article 18-A of the General Municipal Law, authorizes and empowers industrial development agencies to promote the economic welfare and prosperity of the inhabitants within the community, including the County of Essex, New York (the “County”), to actively promote, attract, encourage and develop economically sound commerce and industry within the County, and to make and execute straight-lease agreements, security documents, and other contracts and instruments necessary or convenient in the exercise of such powers; and in order to fulfill those purposes the Agency desires to facilitate the Project (hereinafter defined); and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Agency was established by Chapter 563 of the Laws of 1973 of the State of New York (Section 914-a, Title 2 of Article 18-A of the General Municipal Law, as heretofore amended and supplemented) for the benefit of Essex County and the inhabitants thereof; and

WHEREAS, the Project will consist of (a)(1) the acquisition of an interest in the Company’s interim permit and easement issued by the New York State Office of General Services (“OGS”) in relation to submerged State-owned land anticipated to be located in the Towns of Chesterfield, Willsboro, Essex, Westport, Moriah, Crown Point and Ticonderoga, Essex County, New York (collectively, as may be supplemented from time to time, the “Land”), (2) the acquisition of certain machinery and equipment, including two five-inch diameter high-voltage direct current (“HVDC”) transmission cables (collectively, the “Equipment”), and (3) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt (“MW”) HVDC electric transmission line and related infrastructure (the “Improvements”, and together with the Land and Equipment, the “Project Facility”), all of the foregoing for use by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City, (b) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including exemptions from sales and use taxes, mortgage recording taxes, and real property taxes for the Project Facility (but not including special district taxes) (collectively, the “Financial Assistance”); and (c) the lease of the Project Facility by the Agency back to the Company; all as contemplated by and in furtherance of the purposes of the General Municipal Law (collectively, the “Project”); and

WHEREAS, the Company has represented that the Project is expected to maintain or increase employment in the County and has made additional factual representations concerning itself and the Project upon which the Agency is relying in entering into this Agreement; and the provision by the Agency of the Financial Assistance to the Company through a straight-lease transaction has been determined to be necessary in order for the Project to be economically viable; and if the Agency does not provide such Financial Assistance, the Company could not feasibly proceed with the Project; and

WHEREAS, to facilitate the Project, the Agency and the Company have entered into negotiations to execute and deliver a “straight-lease transaction” within the meaning of Section 854 (15) of the Act in which the Company will lease the Project Facility to the Agency upon the terms and conditions hereinafter set forth in that certain Company Lease by and between the Agency and the Company of even date herewith (the “Company Lease”), and the Agency will lease the Project Facility back to the Company upon the terms and conditions set forth in that certain Agency Lease by and between the Agency and the Company of even date herewith (the “Agency Lease”), and in furtherance of such purposes, on May 20, 2021 (“Inducement and Authorization Date”) the Agency took official action with respect to the Project, authorizing the undertaking of the Project, and on October 25, 2021, the Agency adopted an authorizing resolution with respect to the straight-lease transaction for the benefit of the Company with respect to the Project (the “Approving Resolution”), approving the provision of the Financial Assistance, the form of the straight-lease transaction documents, and their execution by representatives of the Agency (the “Approving Date”); and

WHEREAS, the Project is owned by the Company, but deemed under the control of the Agency pursuant to the Company Lease and the Agency Lease for purposes of providing the benefits of the Act to the Company; and

WHEREAS, the Company has made or will make application to a lender or a consortium of lenders (collectively, the “Bank”), for construction/permanent financing (the “Bank Loan”) to be used by the Company to undertake construction of the Project Facility; and

WHEREAS, as security for the Bank Loan, the Agency and the Company shall grant a mortgage in the Project Facility to the Bank (the “Bank Mortgage”).

NOW, THEREFORE, in consideration of these premises and the mutual covenants contained herein, and in order for the Agency and the Company to provide benefits to the Agency’s residents, the parties hereto covenant, agree and obligate themselves as follows; provided that no covenant, agreement or obligation of the Agency under this Agreement, the Company Lease or the Agency Lease shall ever constitute a general debt or obligation of the Agency, the County or the State with respect to the Project;

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. In addition to the words and terms defined or capitalized in the recitals of this Agreement and elsewhere herein, the following words and terms shall have the respective meaning set forth below unless the context otherwise requires:

“Act” means the New York State Industrial Development Agency Act, constituting Chapter 1030 of the Laws of 1969 of the State of New York (Title 1 of Article 18-A of the General Municipal Law) and Chapter 563 of the Laws of 1973 of the State of New York (Section 914-a, Title 2 of Article 18-A of the General Municipal Law, as heretofore amended and supplemented).

“Affiliate” means a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, the Company. The term “control” (including the related terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity interest of such Person.

“Agency” means the Essex County Industrial Development Agency, a governmental agency and instrumentality constituting a public benefit corporation of the State, and its successors and assigns.

“Agency Documents” means this Agreement, the Agency Lease, the Company Lease and the PILOT Agreement.

“Agency Lease” means the agreement between the Agency and the Company pursuant to which the Agency will lease the Project Facility to the Company for the Lease Term.

“Agreement” means this Project Agreement, dated the date hereof, by and between the Agency and the Company.

“Authorized Agency Representative” means the person at the time designated to act on behalf of the Agency by a written certificate furnished to the Company containing the specimen signature of such person and signed on behalf of the Agency by its Chairman or Vice Chairman. Such certificate may designate an alternate or alternates.

“Authorized Company Representative” means the person at the time designated to act on behalf of the Company by a written certificate furnished to the Agency containing the specimen signature of such person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates.

“Bank” means a lender or consortium of lenders providing financing for the Project.

“Bank Loan” means the loan or loans from the Bank to the Company evidenced by the Bank Note.

“Bank Mortgage” means any mortgage or mortgages on the Project Facility from the Company in favor of the Bank in connection with the Bank Loan, as may be modified, supplemented, consolidated or amended from time to time.

“Bank Note” means the promissory note or notes executed and delivered by the Company to the Bank in connection with the Bank Loan, as may be modified, supplemented, consolidated or amended from time to time.

“Benefits” shall mean, collectively, all exemptions from any applicable sales or use tax, mortgage recording tax, transfer tax, and filing and recording fees (to the extent not already paid or reimbursed by the Company to the State) derived from the Agency’s participation in the straight-lease transaction contemplated by this Agreement.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions are authorized by law or executive order to remain closed.

“Closing Date” means the date of the execution and delivery of the Transaction Documents by the Company and the Agency.

“Commercial Operation Date” means the date on which the Company has completed construction and operational testing of the Project Facility and has established that the Project Facility is capable of continuous electrical transmission at its maximum capacity and has undergone line loss testing, as evidenced by the date stated in the Company’s notice to the New York Independent System Operator that the Project Facility has become or will become commercially operational.

“Company” means CHPE LLC, a New York limited liability company, organized and existing under the laws of the State of New York, its successors and assigns, and any surviving, resulting or transferred corporation or other entity, or Affiliate.

“Company Documents” means this Agreement, the Company Lease, the Agency Lease, the PILOT Agreement, the Mortgages, and any other document related thereto to which the Company is a party.

“Company Lease” means the agreement between the Company and the Agency pursuant to which the Company will lease the Land together with the Improvements to the Agency for the Lease Term.

“County” means the County of Essex, a municipality and political subdivision of the State.

“Event of Default” has the meaning provided in Section 7.1 of this Agreement.

“Exempt Purchase” means tangible personal property, services, rentals, and consumables purchased by or on behalf of Company as agent for the Agency in connection with the Project on or before the end of the termination of this Agreement at the end of the Lease Term, in accordance with Section 10.7 hereof.

“Fixed Termination Date” means December 31 of the calendar year in which the last PILOT Payment pursuant to the PILOT Agreement is due.

“FT-123” means State Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

“Inducement and Authorization Date” means May 20, 2021.

“Inducement Resolution” means the resolution of the board of directors of the Agency adopted on May 20, 2021.

“Lease Term” means the period commencing from the date of this Agreement to the Fixed Termination Date or such earlier date as provided in Section 5.1 of the Company Lease.

“Maximum Sales Tax Exemption Benefit” shall mean the aggregate sales and use tax exemption benefit reported on ST-340 forms submitted to the State and associated with the acquiring, constructing, installing, and equipping the Project Facility, and shall not exceed \$22,364,953.

“Mortgages” means the Bank Mortgage.

“Net Proceeds”, when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection thereof.

“Permitted Encumbrances” means “Permitted Encumbrances” as such term is defined in the Agency Lease.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

“PILOT Agreement” means the payment in lieu of tax agreement dated as of November 1, 2021, by and between the Company and the Agency with respect to the Project Facility, a copy of which is attached hereto as Exhibit B.

“Project” has the meaning provided in the recitals of this Agreement.

“Project Facility” has the meaning provided in the recitals of this Agreement.

“Recapture Event” has the meaning provided in Section 7.4 of this Agreement.

“Resolution” means the final approving resolution of the Agency adopted on October 25, 2021.

“Sales Taxes” means any State and local tax(es) imposed by Articles 28 and 29 of the New York Tax Law, as the same may be amended from time to time.

“Sales Tax Exemption Letter” means the sales tax exemption letter, which the Agency has made available to the Company and a form of which is attached hereto as Exhibit A, and any extensions of same by the Agency.



“State” means the State of New York.

“ST-60” means State Form ST-60, IDA Appointment of Project Operator or Agent for Sales Tax Purposes.

“ST-123” means State Form ST-123, IDA Agent or Project Operator Exempt Purchase Certificate.

“ST-340” means State Form ST-340, Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA).

“Transaction Documents” means the Agency Documents and the Company Documents.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by the Agency. The Agency hereby represents and warrants that:

(a) The Agency is a governmental agency and instrumentality constituting a body corporate and politic and a public benefit corporation of the State duly created and existing pursuant to the Act.

(b) The Agency has a leasehold interest in the Land subject only to the Permitted Encumbrances. Under the provisions of the Act, the Agency has duly authorized and has full power and authority to enter into the Agency Documents and to perform its obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Agreement and the Agency Documents on its behalf.

(c) Neither the execution and delivery of the Agency Documents, nor the performance of the obligations under or consummation of the transactions contemplated by this Agreement or the Agency Lease, violates or will violate any law or governmental order, conflicts or will conflict with any material term or provision of any agreement or instrument to which the Agency is a party or by which it is bound, or constitutes or will constitute a material breach of or default under any such agreement or instrument.

(d) The Agency finds, based on the information provided by the Company in the application requesting the Financial Assistance dated March 25, 2021, as amended, submitted by the Company to the Agency (the “Application”), that the acquisition, construction, installation and equipping of the Project will further the public purposes of the Act for which the Agency was created by promoting economically sound industry for the purpose of creating employment and preventing unemployment and economic deterioration.

Section 2.2 Representations and Warranties by the Company. The Company hereby represents and warrants that:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State, has full power and authority to enter into this Agreement and the Company Documents and to perform its obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Agreement and the Company Documents on its behalf.

(b) There is no action or proceeding pending or, to the actual knowledge of the Company, threatened against the Company before any court or administrative agency that adversely affects the ability of the Company to perform its obligations under this Agreement or the Company Documents. Neither the execution and delivery of this Agreement or the Company Documents, nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions hereof, conflicts or will conflict with, or results or will result in a breach of the terms, conditions, or provisions of any company restriction or of any court or governmental agency, or any agreement or instrument to which the Company is now a party or by which it is presently bound, or constitutes or will constitute a default under any of the foregoing.

(c) The Company intends to operate the Project, or cause the Project to be operated, in accordance with this Agreement and as a qualified "project" in accordance with and as defined in the Act, from the start of the Lease Term to the expiration or earlier termination of the Lease Term.

(d) To the best knowledge of the Company, the operation of the Project in the manner contemplated by this Agreement will not conflict with any zoning, building, environmental, safety or other regulations and requirements of governmental authorities applicable thereto. The Company has caused the Project to be designed in accordance with all such regulations and requirements, which the Company believes to be applicable thereto.

(e) None of the representations delivered by the Company pursuant to this Agreement nor any representation of the Company contained in any other document, certificate or statement furnished to the Agency, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

(f) The Financial Assistance provided by the Agency to the Company through the straight-lease transaction as contemplated by this Agreement is reasonably necessary to induce the Company to proceed with the Project.

(g) No person other than the Company is or will be in use, occupancy or possession of any portion of the Project Facility during the term of this Agreement.

(h) The transaction contemplated by this Agreement will not result in the removal of any property, plant or facility of the Company or any other occupant or

user of the Project Facility from one area of the State (but outside of the County) to within the County or in the abandonment of one or more facilities or plants of the Company or any other occupant or user of the Project Facility located within the State (but outside of the County).

(i) Undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(j) This Agreement and the other Company Documents constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(k) The Application, as amended from time to time, is true, correct and complete in all material respects.

(l) The Company has complied with the requirements of the State Environmental Quality Review Act, as amended (Article 8 of the Environmental Conservation Law of the State) and all regulations promulgated thereunder, and the Company is not the subject of a consent order, investigation or inquiry by the State Department of Environmental Conservation with respect to the Project or other assets of the Company.

(m) Upon the completion of the construction of the Project, the Company will obtain any permits or certificates required by any governmental agency or regulatory body having jurisdiction.

(n) The Company certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations, subject to its right to challenge the applicability of same to the Company or the Project.

(o) In lieu of filing annual certified statements with the Agency regarding employment relating to the Project, the Company certifies that, as described in the Application, no full-time equivalent jobs will be retained or created as a result of the Project.

### ARTICLE III RESERVED

### ARTICLE IV THE PROJECT

Section 4.1 RESERVED.

Section 4.2 RESERVED.

Section 4.3 Limitation on Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to Exempt Purchases effected by the Company as agent for the Agency, or its contractors or subcontractors as indirect agents, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment or other personal property (other than Exempt Purchases) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Company acknowledges and represents that it is familiar with the laws of the State as applicable to Sales Taxes and the Sales Tax Exemption Letter, and it understands that a failure to comply with such applicable law (or with the terms and conditions of the Sales Tax Exemption Letter or this Agreement) may result in the loss by the Company of the exemption from Sales Taxes and other benefits hereunder.

(b) The Company covenants and agrees that after the date hereof it shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Company for Exempt Property as agent for the Agency in connection with the Project:

"This contract is being entered into by or on behalf of CHPE LLC, a New York limited liability company (the "Company"), in its capacity as agent for and on behalf of the Essex County Industrial Development Agency (the "Agency") in connection with a certain project of the Agency, consisting of the acquisition and construction of the facilities therein (the "Project"), such Project to be located in the Towns of Chesterfield, Willsboro, Essex, Westport, Moriah, Crown Point and Ticonderoga, Essex County, New York. Rentals and the purchase of furnishings, trade fixtures, machinery, equipment, tools, materials, supplies, fuel, or other tangible personal property and services reasonably related to the acquisition, construction, installation and equipping of the Project which is the subject of this contract, agreement, invoice, bill or purchase order shall be exempt from the sales and use tax levied by the State of New York, and the County of Essex, if any, if effected in accordance with the terms and conditions set forth in the attached Sales Tax Exemption Letter of the Agency, and the Company hereby represents that this contract, agreement, invoice, bill or purchase order is in compliance with the terms of the Sales Tax Exemption Letter. The liability of the Agency hereunder is limited as set forth in the Sales Tax Exemption Letter. By execution or acceptance of this contract, agreement, invoice, bill or purchase order, the vendor, contractor or supplier hereby acknowledges the terms and conditions set forth in this paragraph."

Any vendor, lessor, or licensor that does not collect otherwise applicable sales or use tax in reliance upon the Form ST-123 or Form FT-123 issued by or on behalf of the Company to such vendor, lessor, or licensor, shall be deemed to have acknowledged and agreed to the foregoing language regardless of whether or not the foregoing language is inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with or on behalf of the Company. If the Company, its contractors or subcontractors shall fail to include, incorporate by reference or otherwise cause any new contract, agreement, invoice, bill or purchase order entered into after the date hereof to be, together with the vendor or contractor, subject to the above applicable

language in substantially the above form and shall fail to issue a Form ST-123 or Form FT-123 to the vendor, lessor or licensor, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Company shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order (unless some other exemption applies) and the Company shall return to the Agency or provide documentation showing payment to the State any such benefits or exemptions so taken, together with interest on such amount at the prime rate plus three percent (3%) per annum, from the date of such taking.

(c) (i) The Agency shall make the Sales Tax Exemption Letter available to the Company on the Closing Date. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder.

(ii) The Sales Tax Exemption Letter shall be dated as of the Closing Date and shall be effective for a term expiring upon the earliest of (aa) the first anniversary of the Commercial Operation Date, (bb) the receipt by the Company of the Maximum Sales Tax Benefit, or (cc) the termination of the Agency Lease and/or revocation of the appointment of the Company as agent of the Agency under the Agency Lease and this Agreement. The expiration date of the Sales Tax Exemption Letter may be extended by the Agency upon the written request of the Company in the event construction of the Project Facility, or related mitigation and restoration work, will not or cannot be completed prior to such date.

(iii) The authorizations set forth in the Sales Tax Exemption Letter shall automatically be suspended after notice to the Company that the Company is in default under this Agreement until the Company shall pay any amounts due, and/or perform all of its obligations, with respect to any such default.

(iv) The sales and use tax exemption to be provided pursuant to the Sales Tax Exemption Letter shall not be available for payment of any costs other than the costs of constructing, installing, and equipping the Project Facility;

(v) In the event that the Company shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Exemption Letter in violation of the provisions of Section 4.3(c)(iv) hereof, the Company shall promptly deliver notice of same to the Agency.

(d) The Company shall observe and comply with the terms and conditions of the Sales Tax Exemption Letter.

(e) The Company shall annually file an ST-340 with the New York State Department of Taxation and Finance stating the value of all sales and use tax exemptions claimed by the Company or agents of the Company on behalf of the Agency as required by Section 874(8) of the New York State General Municipal Law (as the

same may be amended from time to time), including, but not limited to, contractors or subcontractors of such agents, under the authority granted pursuant to the Agency Lease and this Agreement. The Company shall furnish a copy of such ST-340 to the Agency at the time of filing with the Department of Taxation and Finance. The Sales Tax Exemption Letter shall not be delivered by the Agency unless the Company shall have completed and submitted to the Agency an ST-60 for the Company, which ST-60 shall be promptly filed by the Agency with the State. In addition, the Company shall not permit any contractor, subcontractor or sub-agent to avail itself of the Sales Tax Exemption Letter until the Company shall have submitted to the Agency a completed ST-60 in respect to such contractor, subcontractor or sub-agent, which ST-60s shall be promptly filed by the Agency with the State. Should the Company fail to comply with the foregoing requirement, the Company shall correct the non-compliance within fifteen (15) days. If the Company fails to correct the non-compliance within fifteen (15) days, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Exemption Letter issued to the Company by the Agency which is in the Company's possession or in the possession of any agent of the Company. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

Section 4.4    RESERVED.

Section 4.5    Indemnity for Environmental Matters. (a) In addition to and without limitation of all other representations, warranties and covenants made by the Company under this Agreement, the Company further represents, warrants and covenants that the Company has not used Hazardous Materials (hereinafter defined) on, from, or affecting the Project Facility in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant have used Hazardous Materials on, from or affecting the Project Facility in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. The Company shall, during the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), to the extent required by applicable law, keep or cause the Project Facility to be kept free of Hazardous Materials. Without limiting the foregoing, during the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project) the Company shall not cause or permit the Project Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant, a release of Hazardous Materials onto the

Project Facility or onto any adjoining property. During the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), the Company shall comply with and use its best efforts to ensure compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and use its best efforts to ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder; provided, however, that if any such tenant or subtenant shall be an Affiliate, the obligation of the Company with respect to such Persons shall be absolute and not limited to best efforts. During the term of this Agreement (and for so long as both the Agency and the Company shall maintain an interest in the Project), the Company shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required by applicable law to clean up and remove all Hazardous Materials, on, from, or affecting the Project Facility, (y) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and policies, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities.

(b) In addition to the Company's general indemnification of Indemnified Parties (as defined herein) pursuant to the Agency Lease, the Company shall at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (w) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the Project Facility, (x) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (y) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (z) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this paragraph, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), and in the regulations promulgated pursuant thereto, or any other applicable federal, state or local environmental law, ordinance, rule, or regulation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

(c) For the purposes of this Section 4.5, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(d) To effectuate the purposes of this Section 4.5, the Company will provide for and insure, in the public liability policies required in this Agreement, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section by naming the Agency as an additional insured under such policies. Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Section 4.5 shall survive and remain in full force and effect after the termination of this Agreement.

Section 4.6 RESERVED.

Section 4.7 RESERVED.

Section 4.8 No-Default Certificates.

(a) The Company shall deliver to the Agency on January 1 of each year beginning after the Closing Date (i) a certificate of an Authorized Company Representative as to whether or not, to the knowledge of such Authorized Company Representative after due inquiry, as of the close of the immediately preceding calendar year, and at all times during such year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Company Document to which it shall be a party, and if such Authorized Company Representative shall have obtained knowledge of any default in such compliance or notice of such default, he or she shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Company with respect thereto; and (ii) a certificate of an Authorized Company Representative that the insurance it maintains complies with this Agreement, that such insurance has been in full force and effect at all times during the preceding calendar year, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect. In addition, upon twenty (20) Business Days' prior written request by the Agency, the Company will execute, acknowledge and deliver to the Agency a certificate of an Authorized Company Representative either stating that to the knowledge of such Authorized Company Representative after due inquiry, no default under or breach of any of the terms hereof which, with the passage of time or the giving of notice or both would constitute an Event of Default hereunder, exists or specifying each such default or breach of which such Authorized Company Representative has knowledge.

(b) The Company shall immediately notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Company Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Company Representative and set forth a description of the default and



the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

Section 4.9 Further Assurances. The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Agency reasonably deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 4.10 Further Encumbrances. The Company shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project or any part thereof, or the interest of the Company in the Project or this Agreement, except for Permitted Encumbrances.

## ARTICLE V RESERVED

## ARTICLE VI SALE, ASSIGNMENT AND SUBLETTING

### Section 6.1 Assignment and Subletting.

(a) This Agreement may be assigned by the Company in connection with assignment of the Agency Lease provided for pursuant to Section 9.2 thereof.

(b) The Company may not sell its interest in the Project, or sublease all or substantially all of the Project, except as permitted by the Agency Lease.

## ARTICLE VII EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) A default by the Company under the Company Documents which remains uncured beyond the applicable notice and/or grace period provided hereunder;

(b) Any representation made by the Company hereunder shall have been false in any material respect when made;

Section 7.2 Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder for thirty (30) days after written notice of such Event of Default is issued by the Agency to the Company, the Agency may take any one or more of the following remedial steps:

(a) The Agency may take whatever action at law or in equity as may appear necessary or desirable, including an action for damages, injunction or specific performance; or

(b) The Agency may suspend or terminate the Sales Tax Exemption Letter or require the Company to surrender the Sales Tax Exemption Letter to the Agency for cancellation.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated.

Section 7.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide the Financial Assistance to the Company for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

Upon the occurrence of a Recapture Event that occurs and remains uncured after thirty (30) days' written notice thereof prior to the sixth (6th) anniversary of the Closing Date, the Company shall pay to the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the following amounts:

(A) one hundred percent (100%) of the Benefits (hereinafter defined) if the Recapture Event occurs within the first two (2) years after the Closing Date; or

(B) fifty percent (50%) of the Benefits if the Recapture Event occurs during the third (3rd) or fourth (4th) year after the Closing Date; or

(C) twenty percent (20%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Closing Date.

(b) The term "Benefits" shall mean, collectively, all exemptions from any applicable sales or use tax, mortgage recording tax, transfer tax, and filing and recording fees (to the extent not already paid or reimbursed by the Company to the State) derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement.

(c) The term "Recapture Event" shall mean any of the following events:

(1) Failure by the Company to complete the acquisition, construction, installation and equipping of the Project Facility;

(2) The Project or any material part thereof shall cease to constitute a qualified "project" under the Act;

(3) The Company shall have subleased all or any portion of the Project, without the prior written consent of the Agency, in a manner not permitted by the Agency Lease; or

(4) The Company shall sell, lease, transfer or otherwise dispose of all or substantially all of its interest in the Project Facility, without the prior written consent of the Agency, in a manner not permitted by the Agency Lease.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Project Facility, or (ii) the inability at law of the Company after the Project Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Project Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Company or any Affiliate.

(d) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event made during the term of this Agreement, which notification shall set forth the terms of such Recapture Event and/or disposition.

Section 7.5 Limited Obligation. In the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of amounts payable to the Agency by the County hereunder; and provided further that recourse against the Agency hereunder or under any of the Company Documents shall be limited to the Agency's interest in the Project.

Section 7.6 Right to Cure. Notwithstanding anything in this Agreement to the contrary, prior to the exercise of any remedy by the Agency hereunder following an Event of Default or Recapture Event, the Company, any Successor (as defined in the Agency Lease), and any Bank shall have an absolute right to cure such Event of Default or Recapture Event during the time period allowed for curing same. If the Company at any time during the Lease Term prior to the occurrence of an Event of Default or Recapture Event provides a written request to the Agency that notices hereunder be provided to any Bank, any such Bank shall be afforded an additional thirty (30) days (beyond the time period allowed for the Company to cure) within which to cure an Event of Default or Recapture Event on behalf of the Company.

ARTICLE VIII  
SPECIAL COVENANTS

Section 8.1 Existence. During the Lease Term, the Company will maintain its existence as a limited liability company in good standing and its qualification to do business in the State, except as permitted by the Agency Lease.

Section 8.2 No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE LEASED PROPERTY OR THAT THE PROJECT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.3 RESERVED.

Section 8.4 No Recourse.

(a) All covenants, stipulation, promises, agreements and obligations of the Agency contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent (other than the Company) or employee of the Agency in his or her individual capacity. In the event of any default by the Agency hereunder, the liability to the Company shall be enforceable only out of the Company's interest under this Agreement and there shall be no other recourse by the Company against the Agency, or any of its members, officers, agents (other than the Company) or employees, past, present or future, or against any of the Project now or hereafter owned by it or them.

(b) The obligations and agreements of the Company contained herein and in the other Company Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, officer, agent, servant or employee of the Company in his individual capacity, and the members, officers, agents, servants and employees of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

Section 8.5 RESERVED.

Section 8.6 Compliance with Environmental Laws. The Company shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that the acquisition, construction, operation and maintenance of the Project Facility are carried out in substantial compliance with the applicable provisions of the New York State Environmental Conservation Law and applicable regulations promulgated thereunder by the New York State Department of Environmental Conservation.

Section 8.7 RESERVED.

Section 8.8 RESERVED.

ARTICLE IX  
SUBORDINATION AND NON-ATTORNMENMENT

Section 9.1 Subordination to Mortgage. This Agreement and any and all modifications, amendments, renewals and extensions hereof shall be subject and subordinate to any mortgage, security agreement or collateral in favor of the Bank, as their interests may appear, with respect to the Project, and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 9.2 Non-Attornment. Except as provided in the Agency Lease, the Agency shall maintain a leasehold interest in the Land pursuant to the straight lease arrangement covered by the Company Documents and the Agency shall not be bound to the Bank or such other party under the terms, covenants and conditions of the Company Documents, and the Agency shall not attorn to, and shall not be liable to and shall not recognize the Bank or such other party as the Agency's new landlord for the balance of the term of this Agreement upon and subject to all the terms and conditions thereof, and this Agreement and the rights of Agency and the Company hereunder shall continue in full force and effect under this Agreement between the Agency and the Company or such other party upon all the terms, covenants, and agreements set out in the Company Documents.

ARTICLE X  
MISCELLANEOUS

Section 10.1 Notices. All notices, certificates and other communications under this Agreement shall be sufficiently given and shall be deemed given when delivered by hand or mailed by first class mail, postage prepaid, addressed as follows:

(a) If to the Agency: Essex County Industrial Development Agency  
7566 Court Street, PO Box 217  
Elizabethtown, New York 12932  
Attention: Director

With a copy to: Jennifer Briggs  
Briggs Law Firm LLP  
2296 Saranac Avenue  
Lake Placid, New York 12946

(b) If to the Company: CHPE LLC  
600 Broadway  
Albany, New York 12207  
Attention: William Helmer, Esq.

with a copy to: Swartz Moses PLLC  
1583 East Genesee Street  
Skaneateles, NY 13152  
Attention: Peter Swartz, Esq.

A duplicate copy of each notice, certificate or other communication given under this Agreement to the Agency or the Company during the Lease Term shall also be given to each of the other parties referred to in this Section 10.1. The Company, the Agency and the Bank, if any, may, by notice given under this Section 10.1, designate any further or different addresses to which, or the manner by which, subsequent notices, certificates or other communications shall be sent.

Section 10.2 Binding Nature of Agreement. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and assigns, subject, however, to the limitations contained in Sections 6.1 and 8.1 hereof.

Section 10.3 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render enforceable any other provision hereof.

Section 10.4 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written.

Section 10.5 Amendments, Changes and Modifications. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated without an agreement in writing and signed by the Agency and the Company.

Section 10.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; and such counterparts shall together constitute one and the same instrument.

Section 10.7 Term of Agreement. This Agreement shall become effective upon its delivery and shall continue in effect until the expiration of the Lease Term.

Section 10.8 Payment or Performance on Holidays. If the date for performance of any act or the exercising of any right, as provided in this Agreement, shall be a legal holiday or a day on which banking institutions in the State are authorized or required by law or executive order to remain closed, such payment shall be made or act performed or right exercised on the next succeeding Business Day not a legal holiday nor a day on which such banking institutions are authorized by law to remain closed.

Section 10.9 Filing and Recording. The Company and the Agency covenant that they will cooperate with the Bank, if any, in all recording, filing and re-recording or refiling of all financing statements, continuation statements, notices and other instruments required by applicable law to be required by law in order fully to preserve and protect the rights of such Bank in this Agreement and the Bank Mortgage related thereto as against creditors of, or for value from, the Agency and the Company.

Section 10.10 Captions. The captions and heading in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 10.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Agency has caused this Agreement to be executed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the date first above written.

(SEAL)

ESSEX COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

ATTEST:



Jamie Rogers  
Secretary

By:   
Darren Darrah  
Chairman

CHPE LLC

By: \_\_\_\_\_  
Name: Todd Singer  
Title: Chief Financial Officer

*[Signature Page to Project Agreement]*



)

Notary Public



***[Notary Page to Project Agreement]***

IN WITNESS WHEREOF, the Agency has caused this Agreement to be executed in its corporate name and its corporate seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the date first above written.

(SEAL)

ESSEX COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

ATTEST:

By: \_\_\_\_\_  
Darren Darrah  
Chairman

\_\_\_\_\_  
Jamie Rogers  
Secretary

CHPE LLC

By: \_\_\_\_\_  
Name: Todd Singer  
Title: Chief Financial Officer

*[Signature Page to Project Agreement]*

STATE OF NEW YORK                    )  
  ss:  
COUNTY OF ESSEX                    )

On this \_\_\_\_\_ day of December, 2021 before me, the undersigned, a notary public in and for said state, personally appeared Darren Darrah 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK                    )  
  ss:  
COUNTY OF Albany                    )

On this 16<sup>th</sup> day of December, 2021 before me, the undersigned, a notary public in and for said state, personally appeared Todd Singer 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 signatures on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

TRACIE A. CHASE  
Notary Public, State of New York  
Qualified in Albany Co. No. 01CH4989574  
My Commission Expires 12/9/2025

*[Notary Page to Project Agreement]*

**EXHIBIT A**

**Form of Sales Tax Exemption Letter**

Form of Sales Tax Exemption Letter

COUNTY OF ESSEX INDUSTRIAL  
DEVELOPMENT AGENCY  
P.O. Box 217  
7566 Court Street  
Elizabethtown, New York 12932

November 1, 2021

CHPE LLC  
600 Broadway  
Albany, New York 12207

Re: County of Essex Industrial Development Agency  
CHPE LLC Project.

Dear Sir/Madam:

Pursuant to TSB-M-87(7)S issued by the New York State Department of Taxation and Finance (“DTF”) on April 1, 1987 and TSB-M-14(1.1)S issued by the DTF on February 12, 2014 (together, the “Policy Statement”), you have requested a letter from County of Essex Industrial Development Agency (the “Agency”), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, as amended (the “Enabling Act”), and Chapter 563 of the Laws of 1973 of the State of New York, as amended, constituting Section 914-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project.

CHPE LLC, a limited liability company organized under the laws of the State of New York with offices at 600 Broadway, Albany, New York (the “Company”), requested that the Agency undertake and the Agency agreed to undertake a project (the “Project”) for the benefit of the Company consisting of: (a)(1) the acquisition of an interest in the Company’s interim permit and easement issued by the New York State Office of General Services (“OGS”) in relation to submerged State-owned land anticipated to be located in the Towns of Chesterfield, Willsboro, Essex, Westport, Moriah, Crown Point and Ticonderoga, Essex County, New York (collectively, as may be supplemented from time to time, the “Land”), (2) the acquisition of certain machinery and equipment, including two five-inch diameter high-voltage direct current (“HVDC”) transmission cables (collectively, the “Equipment”), and (3) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt (“MW”) HVDC electric transmission line and related infrastructure (the “Improvements”, and together with the Land and Equipment, the “Project Facility”), all of the foregoing for use by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City, (b) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to

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the foregoing, including exemptions from sales and use taxes, mortgage recording taxes, and real property taxes for the Project Facility (but not including special district taxes) (collectively, the “Financial Assistance”); and (c) the lease of the Project Facility by the Agency back to the Company; all as contemplated by and in furtherance of the purposes of the Act

The Company leased the Project Facility to the Agency pursuant to a certain company lease agreement between the Company and the Agency dated as of November 1, 2021 (the “Company Lease”). Pursuant to a certain agency lease between the Agency and the Company dated as of November 1, 2021 (the “Agency Lease”), the Agency leased the Project Facility back to the Company. Pursuant to a certain project agreement between the Agency and the Company dated as of November 1, 2021 (the “Project Agreement”), the Agency authorized the Company to act as agent for and on behalf of the Agency in connection with the acquisition, construction, installation and equipping of the Project Facility. This agency appointment includes the power to delegate such agency to contractors and subcontractors performing work on or making purchases for the acquisition, construction, installation and equipping of the Project Facility (each such contractor or subcontractor, an “Indirect Agent”). The Agency authorizes the Company to use and the Company shall use this letter only for the payment of costs incurred in connection with the Project.

Each contract, agreement, lease, invoice, bill or purchase order entered into by the Company or Indirect Agent, as agent for the Agency, in connection with the acquisition, construction, installation or equipping of the Project Facility, shall include language in substantially the following form:

“This contract is being entered into by or on behalf of CHPE LLC, a New York limited liability company (the “Company”), in its capacity as agent for and on behalf of the Essex County Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency, consisting of the acquisition and construction of the facilities therein (the “Project”), such Project to be located in the Towns of Chesterfield, Willsboro, Essex, Westport, Moriah, Crown Point and Ticonderoga, Essex County, New York. Rentals and the purchase of furnishings, trade fixtures, machinery, equipment, tools, materials, supplies, fuel, or other tangible personal property and services reasonably related to the acquisition, construction, installation and equipping of the Project which is the subject of this contract, agreement, invoice, bill or purchase order shall be exempt from the sales and use tax levied by the State of New York, and the County of Essex, if any, if effected in accordance with the terms and conditions set forth in the attached Sales Tax Exemption Letter of the Agency, and the Company hereby represents that this contract, agreement, invoice, bill or purchase order is in compliance with the terms of the Sales Tax Exemption Letter. The liability of the Agency hereunder is limited as set forth in the Sales Tax Exemption Letter. By execution or acceptance of this contract, agreement, invoice, bill or purchase order, the vendor, contractor or supplier hereby acknowledges the terms and conditions set forth in this paragraph.”

Any vendor, lessor, or licensor that does not collect otherwise applicable sales or use tax in reliance upon the Form ST-123 (as defined herein) or Form FT-123 (as defined herein) issued by

the Company or Indirect Agent to such vendor, lessor, or licensor, shall be deemed to have acknowledged and agreed to the foregoing language regardless of whether or not the foregoing language is inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with, or for the benefit of, the Company or Indirect Agent.

Rentals and the purchases by the Company or Indirect Agent, acting as agent of the Agency, of furnishings, trade fixtures, machinery, equipment, tools, materials, supplies, fuel, or other tangible personal property and services reasonably related to the acquisition, construction, installation and equipping of the Project Facility shall be exempt from the sales and use tax levied by the State of New York and the County of Essex, on the condition that the use of such exemption is in accordance with the terms and conditions of this Sales Tax Exemption Letter and the Project Agreement.

The Agency shall not be liable, either directly or indirectly or contingently, in any manner or to any extent whatsoever, and the Company shall be the sole party liable, under any lease, sublease, license, sublicense, contract, agreement, invoice, bill or purchase order entered into by the Company or Indirect Agent, as agent for the Agency hereunder.

The exemption from sales and use taxes provided under the Project Agreement is granted subject to the requirements of Section 875 of the Act, which requirements are incorporated herein by reference, and the Company agrees, and the Indirect Agents by their use of this letter agree, to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

Accordingly, until the earlier of (i) the first anniversary of the Commercial Operation Date (as defined in the Project Agreement), (ii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Project Agreement), or (iii) the termination of the Agency Lease and/or revocation of the appointment of the Company as agent of the Agency under the Project Agreement, all vendors, lessors, and licensors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that rentals and purchases of personal property and services, to the extent effected by the Company or Indirect Agent, as agent for the Agency, are exempt from all New York State and County of Essex sales and use taxes.

THIS LETTER SHALL SERVE AS PROOF OF THE EXISTENCE OF AN AGENCY CONTRACT BETWEEN THE AGENCY AND THE COMPANY FOR THE SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

The Company or Indirect Agent agrees to provide a completed Form ST-123, IDA Agent or Project Operator Exempt Purchase Certificate (each, a "Form ST-123"), to each vendor, lessor, or licensor from which the Company rents or purchases personal property or services. The Company or Indirect Agent agrees to provide a completed Form FT-123, IDA Agent or Project

Operator Exempt Purchase Certificate for Fuel (each, a “*Form FT-123*”), to each vendor, lessor, or licensor from which the Company purchases fuel (motor fuel, highway diesel motor fuel, non-highway diesel motor fuel, or residual petroleum product, as defined in Form FT-123) in connection with the Project. All vendors, lessors, or licensors are authorized to rely on such completed Form ST-123 or Form FT-123 (as the case may be) as evidence that rentals and purchases of personal property and services, to the extent effected by the Company or Indirect Agent as agent for the Agency pursuant to the Project Agreement, are exempt from all New York State and County of Essex sales and use taxes. Pursuant to TSB-M-14(1.1)S issued by the DTF, a copy of the Form ST-123 or Form FT-123 (as the case may be) retained by any vendor, lessor, or licensor may be accepted by such vendor, lessor, or licensor as a “statement and additional documentary evidence of such exemption” as provided by New York Tax Law § 1132(c)(1), thereby relieving such vendor, lessor, or licensor from the obligation to collect sales and use tax with respect to the acquisition, construction, installation and equipping of the Project Facility.

By the Company’s acceptance of the terms of this letter, and by any Indirect Agent’s use of this letter, the Company and any Indirect Agent agree to accept the terms hereof and represent and warrant to the Agency that the use of this letter by the Company or any Indirect Agent is and will be strictly for the purposes above stated.

In the event you have any questions with respect to the above, please do not hesitate to call the Co-Executive Director of the Agency at (518) 873-9114.

Very truly yours,

COUNTY OF ESSEX INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name:  
Title:



**Exhibit B**

**Copy of PILOT Agreement**