

PROPERTY ACCESS AGREEMENT

This Property Access Agreement (“Agreement”), made this ____ day of _____ 2015, by and between **CITY OF SARATOGA SPRINGS, NEW YORK** (hereinafter referred to as “Owner” or “City”), a municipal corporation with offices at City Hall, 474 Broadway, Saratoga Springs, New York 12866 and **NIAGARA MOHAWK POWER CORPORATION D/B/A NATIONAL GRID** (“National Grid”), a New York corporation, with principal offices at 300 Erie Boulevard West, Syracuse, New York 13202. Owner and National Grid are collectively referred to as the “Parties” or each individually as a “Party.”

The Parties agree to the following terms and conditions:

A. APPROVED ACTIVITIES

National Grid may access property owned by Owner known as the Old Red Spring Area, s/o Excelsior Avenue, n/o High Rock Avenue, Saratoga Springs, New York 12866, Tax Map ID# 166.37-1-2 (the “Property”), to implement an investigation and remediation program at the Saratoga Springs Superfund Site, Operable Unit 2 Project Area (“OU-2”), pursuant to a Consent Decree (“Consent Decree”) dated October 2014, administered by the United States Environmental Protection Agency (“EPA”). National Grid’s scope-of-work at the Property includes Pre-Design Investigation activities such as site and ecological survey, utility location, soil and groundwater investigation and modeling, pursuant to a Remedial Design Work Plan, dated May 2014 and approved by the New York State Department of Environmental Conservation (the “DEC”) by letter dated June 24, 2014 (collectively the “Approved Activities”).

National Grid and Owner agree that this Agreement covers work associated with the Remedial Design Work Plan and any remedial activities necessary shall be covered under a future agreement. The Owner shall be notified of all preconstruction and construction meetings related to the Approved Activities, and at Owner’s discretion, Owner or a representative of Owner may attend.

B. RESTORATION

Upon completion of the Approved Activities, National Grid, at its sole cost and expense, shall repair any damage it may have caused to the Property, restore the Property to its Original Condition, and leave it in a clean, orderly condition as reasonably required by Owner. Original Condition shall be defined as the condition of the Property at the time of entry and commencement of Approved Activities under this Agreement.

C. TERM OF ACCESS and ACCESS FEE

The Approved Activities on the Property are granted from the date first written above through and including February 28, 2016, or upon written notice by the EPA or DEC to cease the Approved Activities, whichever shall first occur. National Grid shall provide Owner with seven (7) days’ notice prior to commencing the Approved Activities.

National Grid agrees to pay Owner a one-time sum of Five Thousand Dollars (\$5,000.00) for facilitating access to onto the Property and other structures necessary for National Grid to perform the Approved Activities at the Property, and for Owner's review of the Remedial Design Work Plan, remedial design drawings (30%, 60%, 90%), Owner representative attendance at preconstruction and construction meetings and coordination and cooperation necessary for National Grid to perform the Approved Activities during the term of this Agreement.

D. HOLD HARMLESS and INSURANCE

Throughout the term of this Agreement, National Grid and/or its contractors shall maintain the following insurance policies: (i) Commercial General Liability of One Million (\$1,000,000) Dollars per Occurrence with a Two Million (\$2,000,000) Dollar Aggregate including completed operations; (ii) commercial automobile insurance policy of not less than One Million (\$1,000,000) Dollars including coverage for owned, hired and non-owned vehicles; (iii) an umbrella policy covering protection in an amount not less than Five Million (\$5,000,000) Dollars combined single limit coverage for injury, death and property damage arising out of any one occurrence; (iv) Pollution Liability Insurance in an amount not less than Five Million (\$5,000,000) Dollars; and (v) NYS Statutory workers compensation and employers liability insurance as required by law. Prior to commencement of the Approved Activities, certificates of insurance from National Grid and National Grid's contractors, that will perform activities on the Property pursuant to this Agreement, shall be furnished to Owner. Owner shall be named as additional insured on a primary and non-contributory basis on all insurance policies required under this Agreement. National Grid retains the right to self-insure its coverages and, in such event, National Grid may provide self-funded coverage and certificates or other evidence of such self-insurance in lieu of insurance certificates issued by insurance companies. Insurance as specified herein must be maintained at all times during the term of this Agreement.

It shall be an affirmative obligation of National Grid to advise City's Office of Risk and Safety via mail to Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within ten (10) days of the cancellation or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement. National Grid acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the City. National Grid shall provide the City with a Certificate of Insurance naming the City as ***Additional Insured on a primary and non-contributory basis*** prior to the commencement of the Approved Activities or use of City facilities. The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality. In the event National Grid utilizes a contractor or subcontractor for any portion of the Approved Activities, the contractor and/or subcontractor shall provide insurance of the same type or types and to the same extent of coverage as that provided by National Grid. All insurance required of the contractor and subcontractor shall name the City of Saratoga Springs as an ***Additional Insured on a primary and non-contributory*** basis for all those activities performed related to the Approved Activities.

National Grid to the fullest extent provided by law, shall indemnify and save harmless the City of Saratoga Springs, its Agents and Employees (hereinafter referred to as "City"), from and against all claims, damages, losses and expense (including, but not limited to, reasonable attorneys' fees), arising out of or resulting from the performance of the Approved Activities sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of National Grid, its employees, contractors and subcontractors or anyone for whom National Grid is legally liable. Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by National Grid, as aforesaid.

The City of Saratoga Springs specifically reserves the right to suspend or terminate all work under this Agreement whenever National Grid and/or its contractors or subcontractors are proceeding in a manner that threatens the life, health or safety of any of National Grid's employees, contractor's employees or subcontractor's employees, City employees or member(s) of the general public on City property. This reservation of rights by the City of Saratoga Springs in no way obligates the City of Saratoga Springs to inspect the safety practices of National Grid or its contractors and subcontractors. If the City of Saratoga Springs exercises its rights pursuant to this part, National Grid shall be given three (3) days to cure the defect, unless the City of Saratoga Springs, in its sole and absolute discretion, determines that the work related to the Approved Activities cannot be suspended for three (3) days due to the City of Saratoga Springs' legal obligation to the public or need for completion of National Grid's work or portion thereof. In such case, the City agrees to reasonably coordinate with National Grid and National Grid shall make every effort to cure the defect. If National Grid fails to cure the identified defect(s) within a reasonable period of time, the City of Saratoga Springs shall have the right to immediately terminate this Agreement.

E. COMMUNICATIONS

All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by e-mail, by facsimile or by hand delivery.

Communications from National Grid to Owner shall be sent to:

Name: Timothy Wales
City Engineer
City of Saratoga Springs
474 Broadway
Saratoga Springs, New York 12866
Telephone: 518-587-3550 x2621
E-mail: tim.wales@saratoga-springs.org

And

Name: Marilyn Rivers, CPCU ARM AIC
Director of Risk and Safety
City of Saratoga Springs
474 Broadway
Saratoga Springs, New York 12866
Telephone: 518-587-3550 x2612
E-mail: marilyn.rivers@saratoga-springs.org

Communications from Owner to National Grid shall be sent to:

Michael Donegan
Project Manager
National Grid
300 Erie Boulevard West
Syracuse, New York 13202
Telephone: (315) 657-6860
E-mail: michael.donegan@cbi.com

and

Joseph S. Giordano
Program Manager
National Grid – Legal Dept.
175 East Old Country Road
Hicksville, NY 11801
Telephone: (516) 545-4790
E-mail: joseph.giordano@nationalgrid.com

F. CONFIDENTIALITY

Each Party hereby acknowledges and agrees that this Agreement and the terms and conditions herein shall be kept confidential by each Party and their respective representatives, subsidiaries, affiliates, agents, employees, suppliers, contractors, lenders, outside counsel and other professionals and shall not, unless required by law, without the prior written consent by an authorized representative of the other Party in each instance, be disclosed by either such Party and/or by such Party's representatives, subsidiaries, affiliates, agents, employees, suppliers, contractors, lenders, outside counsel and other professionals in any manner whatsoever in whole or in part. Notwithstanding the above obligations, National Grid is permitted to disclose the Approved Activities and this Agreement to appropriate regulatory agencies, including but not limited to the New York State Public Service Commission, and New York State Department of Environmental Conservation, National Grid's insurers and their legal counsel as deemed necessary by National Grid.

G. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart for all purposes hereof, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

CITY OF SARATOGA SPRINGS, NEW YORK

By:

Title: Mayor

The person(s) signing this Agreement has represented to National Grid that he or she is the Owner or has the authority to act on behalf of the Owner, and National Grid is relying on this representation.

**NIAGARA MOHAWK POWER CORPORATION
D/B/A NATIONAL GRID**

By: Charles Willard

Title: Director, Site Investigation & Remediation

PCDOC#373466v3