

**Victoria Storrs**

Chair

**David Kidera**

Vice Chair

Assistant Secretary

**Richard Kotlow**

Secretary

Treasurer

**Edward W. De Barbieri**

Member

**Victor Franco**

Member

**Georgette Steffens**

Member

**Chris Welch**

Member

**BETHLEHEM IDA**

TOWN OF BETHLEHEM  
ALBANY COUNTY, NEW YORK

**Town of Bethlehem  
Industrial Development Agency**

445 Delaware Avenue

Delmar, NY 12054

(518) 439-4955

[info@bethlehemida.com](mailto:info@bethlehemida.com)

[www.bethlehemida.com](http://www.bethlehemida.com)

**Catherine M. Hedgeman, Esq.**

Executive Director

Agency Counsel

(518) 752-3111

**Allen F. Maikels**

Chief Financial Officer

Contracting Officer

(518) 487-4679

**John W. Taylor**

Senior Economic Developer

(518) 439-4955 x1189

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**Board Meeting Agenda**

**Tuesday November 14, 2023 | 8:00am | Bethlehem Town Hall Room 101A**

**Livestream:**

<https://us02web.zoom.us/j/84469068942?pwd=ZGVhUURTL3NrQjNkR3dDaEZrZ05adz09>

- I. Call to Order/Roll Call/Quorum Approval (Storrs)**
- II. Approval of Minutes from the October 25, 2023 Board Meeting**
- III. Financial Report (Storrs, Kotlow and Maikels)**
  - 1. Approval of the October 2023 Financials**
- IV. Updates from John Taylor, Senior Economic Director**
- V. New Business**

**A. Items For Action**

- 1. Resolution giving authority to CFO to open bank accounts at KeyBank**
- 2. PSEG Letter Application (Hedgeman and Scott)**

**B. Presentation of Insurance options**

**Greg Turner**

Burt Anthony Associates

Charles B Clarke Inc

**Victoria Storrs**  
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Vice Chair  
Assistant Secretary

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**Edward W. De Barbieri**  
Member

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### Regular Meeting- Minutes

**Wednesday, October 25, 2023 | 8:00 am | Bethlehem Town Hall Room 101A**

**Livestream:**

**<https://us02web.zoom.us/j/84469068942?pwd=ZGVhUURTL3NrQjNkR3dDaEZrZ05adz09>**

#### **I. Call to Order/Roll Call/Quorum Approval**

The annual meeting of the Town of Bethlehem Industrial Development Agency was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, New York. The meeting was called to order at 8:02 a.m. The roll was called, and members present were:

Victoria Storrs, Chair

D. Kidera

V. Franco

R. Kotlow

G. Steffens

C. Welch

E. De Barbieri

Also present:

Al Maikels, Chief Financial Officer

Catherine M. Hedgeman, Esq., Executive Director and Agency Counsel

David VanLuven, Town Supervisor

John Taylor, Senior Economic Developer

**II. Approval of Minutes from the September 27, 2023 Board Meeting**

Mr. Franco made a motion to approve the Minutes from the September 27, 2023 meeting, seconded by Mr. Welch, with all members present in favor.

**III. Financial Report**

**a. Report of the September 2023 Financials**

Mr. Maikels provided an overview of the September 2023 Financials.

**b. Presentation of the 2024 Annual Budget**

Ms. Storrs presented the budget to the Board. Ms. Storrs stated that more detail was provided this year regarding line items that make the budget more transparent. The board reviewed the 2024 Agency budget attached to the board agenda/meeting materials.

**c. Presentation of the 2024-2029 PARIS Budget**

Ms. Storrs and Al Maikels explained the proposed PARIS budget. The Board reviewed the 2024-2027 PARIS budget attached to the board meeting agenda/materials.

**IV. Updates from John Taylor, Senior Economic Director**

Mr. Taylor stated that his current focus is industrial site development. Mr. Taylor mentioned that he hopes to be receiving bids by December 2023. Ms. Steffens asked who would be conducting initial interviews and reviewing bids. Ms. Hedgeman and Mr. Taylor stated that all IDA member input and involvement on this matter is welcome.

**V. Current Applications and Proposed Projects**

**a. West Yard Road**

Ms. Hedgeman stated that the West Yard Road project has been put on pause.

**b. PSEG**

An untraditional pilot was given to PSEG in the year 2002. This was a 20-year pilot. PSEG expressed interest in requesting a new application for a PILOT. Ms. Hedgeman, Ms. Storrs, and Mr. Taylor recently toured the plant and discussed possible options with PSEG. The PILOT letter application will be presented at the next meeting.

**VI. New Business**

**a. Resolution of the Town of Bethlehem IDA Approving the 2024 Budget of the Town of Bethlehem 2024 IDA and accepting the submission and posting of the**

**Budgets of the Town of Bethlehem IDA for Fiscal Years 2025, 2026, and 2027 pursuant to Section 2800 of the New York Public Authorities Law.**

Mr. Kotlow made a motion to approve the 2024 Budget as presented, seconded by Mr. Welch, with all members present in favor.

**b. Resolution of the Town of Bethlehem IDA Approving the 2024-2029 PARIS Budget**

Mr. De Barbieri made a motion to approve the 2024-2029 PARIS budget, seconded by Mr. Kidera, with all members present in favor.

**c. Committee Assignments**

Ms. Storrs and Ms. Hedgeman discussed the importance of one member solely taking on the role of secretary, as opposed to Mr. Kotlow fulfilling the role along with his role as treasurer.

Ms. Storrs made a motion to appoint Mr. De Barbieri as secretary, seconded by Mr. Welch, with all members present in favor.

**VII. Adjournment: 9:21 am.**

Ms. Storrs made a motion to adjourn the meeting, seconded by Mr. De Barbieri, with all members present in favor.



BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF NET ASSETS  
October 31, 2023

ASSETS	October 31,2023
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	459,172.31
200.06 Cash-M&T CD	769,184.40
200.07 Cash-Citizens CD	200,000.00
200.02 Cash-Trustco CD	<u>200,000.00</u>
Total Checking/Savings	1,628,356.71
Other Current Assets	
380 Fee Receivable	27,021.97
480 Prepaid Expense	<u>558.70</u>
Total Other Current Assets	27,580.67
Total Current Assets	<u>1,655,937.38</u>
<b>TOTAL ASSETS</b>	<u><u>1,655,937.38</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
601 Accrued Expenses	<u>19,250.82</u>
Total Current Liabilites	<u>19,250.82</u>
Total Liabilities	<u>19,250.82</u>
Equity	
924 Net Assets	
924.3 Net Assets-Unassigned	<u>1,636,686.56</u>
Total 924 Net Assets	1,636,686.56
Total Equity	<u>1,636,686.56</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>1,655,937.38</u></u>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF REVENUE AND EXPENSES  
October 31, 2023

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME 350,208.35

2116.1 PSEG ENERGY REIMB 121,879.75

Total Income 472,088.10

Expenses

6460.4 Contractual Expenses 107,719.63

6460.5 Business & Economic Development 0.00

Total Expenses 107,719.63

NET ORDINARY INCOME 364,368.47

Other Income/Expense

Other Income

2401 Interest Income 21,949.82

Total Other Income 21,949.82

NET INCOME 386,318.29

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
BUDGET VS ACTUAL  
October 31, 2023

Ordinary Income/Expense	Oct-23	YTD Budget	Variance	Annual Budget
Income				
2116 Fee Income	350,208.35	156,017.65	194,190.70	160,351.00
2106.1 PSEG Energy Reimb	121,879.75	66,666.68	55,213.07	80,000.00
Total Income	472,088.10	222,684.33	249,403.77	240,351.00
Expenses				
6460.4 Contractual Expenses	107,719.63	133,416.67	-25,697.04	160,100.00
6460.5 Business and Economic Dev	0.00	83,333.33	-83,333.33	100,000.00
Total Expenses	107,719.63	216,750.00	-109,030.37	260,100.00
Net Ordinary Income	364,368.47	5,934.33	358,434.14	-19,749.00
Other Income/Expense				
2401 Interest Income	21,949.82	1,000.00	20,949.82	1,200.00
Total Other Income	21,949.82	1,000.00	20,949.82	1,200.00
Net Income	386,318.29	6,934.33	379,383.96	-18,549.00

November 8, 2023

VIA ELECTRONIC MAIL

Catherine Hedgeman, Executive Director & Agency Counsel  
Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, NY 12045

Re: Town of Bethlehem Industrial Development Agency ("Agency") / PSEG Power New York Inc. Transaction – Request for Short-Term Extension of Payment in Lieu of Tax ("PILOT") Agreement for the Bethlehem Energy Center.

Dear Ms. Hedgeman:

Generation Bridge II, LLC (the "Company"), a wholly-owned subsidiary of ArcLight Energy Partners Fund VII, L.P., a private equity fund managed by ArcLight Capital Partners, acquired PSEG Power New York Inc., which was subsequently renamed GB II New York, LLC (the "Project Company"), in February 2022. The Project Company owns the Bethlehem Energy Center (the "Facility"), a natural gas-fired, combined cycle electric-generating facility having a nominal generating capacity of 872 megawatts located in the Town of Bethlehem, New York.

The Project Company and the Agency entered into certain straight-lease transaction documents dated February 5, 2002, including a PILOT agreement (the "PILOT Agreement"), in connection with construction of the Facility. Payments under the PILOT Agreement benefit the Town of Bethlehem (the "Town"), the Bethlehem Central School District (the "School District") and the County of Albany (the "County", and together with the Town and School District, the "Affected Tax Jurisdictions"). The term of the PILOT Agreement is scheduled to expire on December 31, 2023.

Final payments under the PILOT Agreement have been made, with \$919,224 paid in January 2023 for Town and County purposes (subject to an offset for special district taxes) and \$3,676,895 paid in September 2023 for School District purposes. For perspective, however, when tax rates are applied to the Facility's assessed value of \$100,000,000 for those payment periods, the resulting payments would have totaled \$847,309 and \$2,295,383, respectively. In addition to PILOT payments, the Facility makes payments to the Agency for economic development purposes pursuant to Section 23 of the PILOT Agreement ("Energy Reimbursement Payments"). Energy Reimbursement Payments are paid quarterly and totaled \$410,294 for the last 8 quarters through the quarterly period ended July 2023, for an average quarterly payment of \$51,287.

Presently, the Project Company maintains approximately 35 jobs with an annual payroll (including benefits) of approximately \$8.4 million in connection with operation of the Facility and spends an average of approximately \$2.5 million annually on local contractors and locally-sourced materials for routine maintenance. The Project Company also contributes approximately \$30,000 and 40-50 staff-hours annually to local community groups.

The Company plans to seek financial assistance from the Agency to induce continued investment in the Facility that would extend its service life. Those potential investments include currently projected CAPEX and major maintenance expenditures of approximately \$85 million during the 2024-2028 operating period. However, discussions regarding financial assistance and the future of the Facility are not likely to be concluded prior to expiration of the PILOT Agreement, and the Company believes it is in the best interests of the Agency and the Affected Tax Jurisdictions to preserve the status quo through a short-term extension of the PILOT Agreement.

Accordingly, the Company requests that the Agency extend the term of the PILOT Agreement and related transaction documents by one assessment roll year so that the Facility would remain classified as exempt for the remainder of the fiscal years associated with the 2023 assessment roll year and be classified as exempt on the 2024 assessment roll (i.e. for the 2024-2025 School District fiscal year and the 2025 Town and County fiscal years). Given the complexities surrounding determination of appropriate payment levels for the involved payment periods, the Company proposes that the last payments under the PILOT Agreement, including the PILOT payments and Energy Reimbursement Payments referenced above, be repeated during the extended period in order to maintain the position of all involved stakeholders. Such an extension would afford the parties sufficient time to work out the terms of a longer term PILOT Agreement, create budgeting and revenue certainty for the Agency and the Affected Tax Jurisdictions, avoid potential conflict regarding the valuation and taxation of the Facility, and help position the Facility for future investment.

We look forward to continuing our partnership with the Agency and advancing our discussions.

Sincerely,



Richard Brunson  
Senior Vice President and Controller

cc: A. Joseph Scott (via electronic mail)  
Liam Baker (via electronic mail)  
Kevin R. McAuliffe (via electronic mail)  
Matthew S. Moses (via electronic mail)

# BETHLEHEM IDA

TOWN OF BETHLEHEM  
ALBANY COUNTY, NEW YORK

**Town of Bethlehem  
Industrial Development Agency**

445 Delaware Avenue

Delmar, NY 12054

(518) 439-4955

[info@bethlehemida.com](mailto:info@bethlehemida.com)

[www.bethlehemida.com](http://www.bethlehemida.com)

November 8, 2023

SEE ATTACHED SCHEDULE A OF  
AFFECTED TAXING ENTITIES

RE: Town of Bethlehem Industrial Development Agency  
PSEG Power New York Inc./ GB II New York, LLC Project  
Proposed PILOT Agreement - Extension

Dear Ladies and Gentlemen:

In February 2002, the Town of Bethlehem Industrial Development Agency (the “Agency”) entered into certain IDA Straight Lease transaction documents in connection with the development of a natural gas-fired, combined cycle electric-generating facility having a nominal generating capacity of 872 megawatts located in the Town of Bethlehem, New York and known as the Bethlehem Energy Center (the “Facility”). The Facility is owned by PSEG Power New York Inc., which has been re-named GB II New York, LLC (hereinafter, the “Project Company”).

The IDA Straight Lease transaction documents include the following:

1. A PILOT Agreement dated February 5, 2002; and
2. A Lease Agreement dated February 5, 2002.

Under the PILOT Agreement, the Project Company is obligated to make payments in lieu of taxes to Albany County (the “County”), the Town of Bethlehem (the “Town”) and the Bethlehem Central School District (the “School District”). The PILOT Agreement is scheduled to expire on December 31, 2023. Final payments under the PILOT Agreement have been paid by the Project Company, with \$919,224 being paid to the County and the Town in January 2023 (subject to an offset for special district taxes), and \$3,676,895 being paid to the School District in September 2023.

Previously, the Agency has sent correspondence to the County, the Town and the School District advising you all of the pending expiration of the PILOT Agreement.

The Agency has since been contacted by the Project Company with a request to extend the expiration date of the PILOT Agreement (the “Request”). The Project Company has made the Request in connection with the future plans by the Project Company to submit an application to the Agency for

financial assistance relating to new capital investment and maintenance expenditures at the Facility currently estimated to equal \$85 million (the “New Project”).

The Project Company does not expect to be in a position to submit the application to the Agency for the New Project before the expiration of the PILOT Agreement. Accordingly, the Project Company has made the Request to the Agency in order to maintain the status quo with respect to the existing IDA Straight Lease documents pending the completion of the Application and the Agency process with respect to the New Project.

Please note that the Facility has a current assessed value of \$100,000,000. Applying the current tax rates to the Facility, the real property taxes payable by the Project would equal \$847,309 for the County and the Town, and \$2,295,383 for the School District. Note that these amounts are LESS than the amount of the payments in lieu of taxes that are payable by the Project Company under the PILOT Agreement. Under the Request, the Project Company is proposing to continue to make payments in lieu of taxes in the amount of \$919,224 for the County and the Town (again, subject to an offset for special district taxes), and \$3,676,895 for the School District during the period of the extension of the PILOT Agreement. The Agency understands that the period of the extension would not exceed 2 years.

The purpose of this letter is to inform you of the Request, and that the Agency is considering whether to grant the Request and to approve certain documents providing for such Request. The Agency expects to consider the Request and the terms of such Request at its meetings scheduled for November 14, 2023 and December 19, 2023, each at 8:00 a.m., local time in Room 101A at the Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York (collectively, the “Meetings”).

The Agency has invited representatives of Generation Bridge II, LLC (the “Company”), a wholly-owned subsidiary of ArcLight Energy Partners Fund VII, L.P., a private equity fund managed by ArcLight Capital Partners, the owner of the Project Company to attend the November 14, 2023 meeting to make a presentation to the Agency regarding the Request.

The Agency does not plan on scheduling a public hearing pursuant to Section 859-a of the General Municipal Law because the Agency is not granting any “financial assistance” (as defined in Section 854 of the General Municipal Law). The Agency does, however, plan on scheduling a public hearing pursuant to Section 859-a of the General Municipal Law in connection with the Agency’s consideration of the New Project. As required by Section 859-a of the General Municipal Law, the Agency will send you a notice of the public hearing.

The Agency will consider the Request at the Meetings. The Agency would welcome any written comments that you might have with respect to the Request. The Agency will also allow any representative of any affected tax jurisdiction present at the Meetings to address the Agency regarding the Request.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me at the above telephone number.

Sincerely yours,

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

/s/ Catherine Hedgeman

Catherine Hedgeman, Agency Counsel and ED

cc: A. Joseph Scott, III, Esq., Agency Special Counsel (via e-mail)



SCHEDULE A  
LIST OF AFFECTED TAXING ENTITIES

**Albany County**

Attention: Honorable Daniel P. McCoy,  
Albany County Executive  
112 State Street, Room 1200  
Albany, New York 12207

**Town of Bethlehem**

Attention: David VanLuven, Supervisor  
Bethlehem Town Hall  
445 Delaware Avenue  
Delmar, New York 12054

**Bethlehem Central School District**

Attention: Jody Monroe, Superintendent  
Bethlehem Central School District  
700 Delaware Avenue  
Delmar, New York 12054

Attention: Holly Dellenbaugh, President  
Bethlehem Central School District  
700 Delaware Avenue  
Delmar, New York 12054

## MEMORANDUM OF LEASE

The undersigned TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and validly existing under the laws of the State of New York, having its principal office at 445 Delaware Avenue, Delmar, New York 12054, as lessor (the "Agency"), and PSEG POWER NEW YORK INC., a corporation duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State of New York, having an office at 80 Park Plaza, Newark, New Jersey 07102 as lessee (the "Company"), entered into a Lease Agreement as of the 5th day of February, 2002 (the "Lease Agreement"). The Lease Agreement covers the premises described in Exhibit A attached hereto and made a part hereof.

The Lease Agreement provides for the rental of the premises by the Company for a term commencing on February 5, 2002, and terminating at 11:59 p.m. on June 30, 2024 (the "Lease Term").


The Company has the obligation to purchase the premises and equipment for One Dollar (\$1.00) upon expiration of the Lease Term.

The Lease Agreement is available for inspection during normal business hours at the offices of the Agency indicated above.

Record and return to:  
Nixon Peabody LLP  
Clinton Square  
P.O. Box 31051  
Rochester, New York 14603-1051  
Attention: John B. Hood, Esq.

IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Lease to be executed in their respective names as of the 5<sup>th</sup> day of February, 2002.

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: F. Michael Tucker  
Title: Chairman

PSEG POWER NEW YORK INC.

By:   
Name: Jeffrey W. Moore  
Title: Vice President

CWigggreen@csgrlaw.com 719.03  
Project Fossil/16:02:20

STATE OF NEW JERSEY    )  
                                      : SS.:  
COUNTY OF ESSEX        )

On the 5 day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey W. Moore, 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 Memorandum of Lease, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Memorandum of Lease, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

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

MARY PATRICIA CORCORAN  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/6/2006

STATE OF NEW YORK     )  
                                      : SS.:  
COUNTY OF ALBANY     )

On the 5th day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared F. Michael Tucker, 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 Memorandum of Lease, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Memorandum of Lease, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

MAUREEN A. KUCHARSKI  
Notary Public, State of New York  
No. 01KU4855324  
Qualified in Rensselaer County  
Commission Expires June 23, 2002

EXHIBIT A

## Legal Description of Real Property

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem, County of Albany and State of New York, being further described as follows:

Beginning at a point at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara Mohawk Power Corporation ("Niagara") by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, Page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following seven (7) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08°37'25" W a distance of 212.38 feet to a point; (2) N 02°34'59" W a distance of 292.44 feet to a point; (3) N 03°04'27" E a distance of 800.80 feet to a point; (4) N 07°22'16" E a distance of 831.38 feet to a point; (5) N 13°31'57" W a distance of 30.80 feet to a found concrete monument; (6) N 11°17'47" W a distance of 229.80 feet to a found concrete monument; (7) N 28°40'11" W a distance of 8.60 feet to a point therein where the same is intersected by the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following four (4) courses along said dividing line; (1) N 66°48'12" E through a metal rod and cap set at a distance of 2.45 feet from the east line of New York State Highway #193, Route #144 (River Road) a total distance of 213.71 feet to a rod and cap set; (2) S 77°11'59" E a distance of 89.66 feet to a metal rod and cap set; (3) N 67°55'30" E a distance of 646.83 feet to a metal rod and cap set; (4) N 63°05'59" E passing through a metal rod and cap set at 217.64 feet a total distance of 264.94 feet to a point on the westerly line of the "BEACON ISLAND DIKE" as shown on a plan entitled "Albany Steam Station Lands Under Water at Island Creek" prepared by Niagara and having a drawing number of G-3539-E; thence S 08°57'11" E along said westerly line a distance of 86.36 feet to a point; thence N 78°22'58" E a distance of 122.49 feet to a point on the U.S. Pier Head line as established by the U.S. Army Corps of Engineers May 10, 1934 and being further described as being point number 218A as shown on the said plan entitled "Albany Steam Station Lands Under Water at Island Creek"; thence S 11°37'12" E along said Pier Head line a distance of 2085.82 feet to a point in the southeasterly corner of lands conveyed to Niagara as described in Book 1228 of Deeds, Page 195 being a corner in the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following five (5) courses along said dividing line: (1) S 67°30'33" W a distance of 130.00 feet to a metal rod and cap set; (2) S 07°29'12" E a distance of 279.62 feet to a point; (3) S 75°58'09" W a distance of 827.00 feet to a metal rod and cap set; (4) N 26°11'21" W a distance of 148.73 feet to a found concrete monument; (5) S 67°30'33" W a distance of 833.05 feet to the point of beginning (the "Premises"), comprising of an area of 83.50 acres as shown on a Survey of James M. Zuccolotto, N.Y.S.P.L.S., dated November 16, 1999, last revised March 13, 2000, consisting of four (4) sheets, and filed in the Albany County Clerk's Office in Map Drawer 172 as Map No. 10859 on March 20, 2000 (the "Survey").

Bearings and coordinates refer to the N.Y. State Plane Coordinate System (Eastern Zone - NAD '83) based on control established by G.P.S. and adjusted to the published coordinates for N.G.S. horizontal control stations "Rensport", "Schodack" and "New Scot". Distances are grid distances.

BEING the same premises or a portion thereof described in the following instruments: deed from New York State Realty Terminal Company to Niagara recorded in the Albany County Clerk's Office in Book 1265 of Deeds at page 75; deed from Hudson River Estates, Inc. and the Delaware and Hudson Railroad Corporation to Niagara recorded in the Albany County Clerk's Office in Book 1307 of Deeds at page 479; Letters Patent issued June 10, 1953 to Niagara recorded in the Albany County Clerk's Office in Book 1376 of Deeds at page 75; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1420 of Deeds at page 367; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1491 of Deeds at page 139; and deed from Sun Oil Company to Niagara recorded in the Albany County Clerk's Office in Book 1228 of Deeds at page 195.

TOGETHER WITH an easement to build, maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a water main and related equipment over lands now or formerly owned by Niagara, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point, said point being the intersection of the northerly line of the Premises with the center line of an existing eight inch water main, said point being further described as being 13.5 feet± easterly and 110 feet ± southerly of center line station 71+43.58 of the former Delaware and Hudson Railroad Susquehanna Division spur to Cabbage Island, Railroad Valuation map V4-142-B; thence northerly parallel to and 10 feet distant easterly of the center line alignment of the said Delaware and Hudson Railroad line a distance of 2700 feet ± to a point; thence westerly crossing said center line a distance of 27 feet ± to a point; thence northerly parallel to and approximately 13.5 feet westerly of the center line of the former Delaware and Hudson Railroad line a distance of 2-15± feet to a point; thence northeasterly, northerly and northwesterly crossing the Island Creek Diversion Channel (Normans Kill) on the west side of a railroad bridge a distance of 355 feet ± to a point; thence northwesterly a distance of 300 feet ± to a point on the northerly line of lands now or formerly owned by Niagara, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH all right, title and interest of Grantor under a grant made by Hudson River Estates, Inc. to Niagara dated October 21, 1963 recorded in the Albany County Clerk's Office on January 17, 1964 in Book 1782 of Deeds at Page 245, a grant made by Albany Port District Commission to Niagara dated June 30, 1952 recorded in the Albany County Clerk's Office on July 10, 1952 in Book 1318 of Deeds at Page 385, as amended by an Amendment to 1952 Indenture of the Albany Port District Commission, dated May 11, 2000, recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 945 and under a letter agreement, dated June 12, 1952 between The Delaware and Hudson Railroad Corporation and Niagara, subject to any burdens set forth in the above-referenced grants or the above-referenced letter agreement.

TOGETHER WITH an easement to maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a forced main sanitary sewer line over lands now or

formerly owned by Niagara and Consolidated Rail Corporation, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point at the intersection of the westerly line of New York State Highway #193, Route #144 (River Road) with the centerline of the existing 4" force main sanitary sewer, said point being approximately 175 feet south of New York State Survey Station 272+50, said survey station shown on drawings by the New York State Department of Transportation No. RC 45-28 River Road S.H. #193; thence northwesterly a distance of 424 feet± to a point; thence continuing northwesterly on a line deflecting to the right at an angle of 25° 42' a distance of 700 feet± to a point; thence continuing northwesterly on a line deflecting to the left at an angle of 42° 15' a distance of 508 feet± to a point; thence westerly on a line deflecting to the left at an angle of 45° a distance of 323 feet± to a point; thence northwesterly on a line deflecting to the right at an angle of 45° a distance of 67 feet ± to a point on the southerly line of the Feura-Bush-Glenmont Road, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT to the terms of a Grant of Easement for a sewer main between Consolidated Rail Corporation and Niagara dated December 17, 1992 and recorded in the Albany County Clerk's Office on December 30, 1993 in Book 2500 of Deeds at Page 391, as shown on a map annexed to the foregoing Grant of Easement identified as "Map NMP - 137 Albany Steam Station Detail of 4" Force Main Sanitary Sewer Crossing at Penn Central Railroad" at Book 2500 of Deeds at Page 630 and as shown on Sheet 4 of the Survey.

TOGETHER WITH an easement to install, maintain, repair, modify, enlarge, inspect, remove, patrol and replace a water service line to tap into the sixteen (16) inch water main described in an Indenture, made the 29th day of January, 1979 by and between Niagara and the Town of Bethlehem and recorded in the Albany County Clerk's Office on February 14, 2000 in Book 2650 of Deeds at page 108 over lands now or formerly owned by Niagara, 15 feet in width 7.5 feet on each side of the following described centerline:

Commencing at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following three (3) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08° 37' 25" W a distance of 212.38 feet to a point; (2) N 2° 34' 59" W a distance of 292.44 feet to a point; (3) N 03° 04' 27" E a distance of 603.93 feet to a point; thence S 87° 31' E, crossing Route #144 (River Road) New York State Highway #193, a distance of approximately 67.5 feet to a point on the west line of said highway to the point and place of beginning of said centerline; thence S 87° 31' E through the lands now or formerly owned by Niagara approximately 20 feet to the existing Town of Bethlehem waterline and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as



necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT TO the terms of an easement granted to Niagara dated June 15, 1953 and recorded in the Albany County Clerk's Office on July 13, 1953 in Book 1365 of Deeds at Page 225, as shown on Sheets 2 and 3 of the Survey.

TOGETHER WITH the appurtenances, including riparian rights, if any, and all the estate and rights of Grantor in and to the Premises and together with all right, title and interest of Grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the Premises.

SUBJECT TO all other easements, covenants, restrictions and other encumbrances of record.

SUBJECT TO terms, covenants, conditions and provisions of the Letters Patent granted by the People of the State of New York recorded in the Albany County Clerk's Office in Liber 837 of Deeds at page 226, Liber 850 of Deeds at page 432 and Liber 1376 of Deeds at Page 75 to the extent they affect the Premises.

SUBJECT TO any and all right, title and interest the public may have in and to the public highways running through or adjacent to the Premises.

Being and intending to describe the same premises described in a deed from Niagara to Grantor dated May 11, 2000 recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 935.

TOGETHER WITH THE BENEFITS of a Sound Easement Agreement between Niagara and Grantor dated as of May 11, 2000 and recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 889.

TOGETHER WITH AND SUBJECT TO the terms of an Easement Agreement between Grantor and Niagara dated May 11, 2000 recorded in the Albany County Clerk's Office in Book 2655 of Deeds Page 897.

TOGETHER WITH AND SUBJECT TO the terms of a Site Agreement between Grantor and Niagara dated as of February 1, 2000.

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
(TOWN OF BETHLEHEM, NEW YORK)**

**AND**

**PSEG POWER NEW YORK INC.**

**AGREEMENT FOR PAYMENT  
IN LIEU OF TAXES**

**DATED FEBRUARY 5, 2002**

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
(PSEG POWER NEW YORK INC. 2002 FACILITY)**

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RS07894.12

AGREEMENT, made as of the 5th day of February, 2002, by and between PSEG POWER NEW YORK INC., a duly organized and validly existing Delaware corporation located in the Town of Bethlehem and authorized to do business in New York and having an office at 80 Park Plaza, Newark, New Jersey 07102 (the "Company"), and the TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation with an office at 445 Delaware Avenue, Delmar, New York 12054 (the "Agency").

**WITNESSETH:**

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities, to issue its bonds, for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Bethlehem Energy Center Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

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combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the "BEC Facility"); and (3) the acquisition by the Agency and the installation at and on the Land and at the Albany Steam Station and the BEC Facility of a variety of equipment, machinery, and other personal property (the "Equipment") (the Albany Steam Station, the Land, the BEC Facility and the Equipment are hereinafter collectively referred to as the "Facility"); and

WHEREAS, the Company has requested that the Agency provide the following financial assistance:

- (A) The Agency will take title to the Facility and lease the Facility back to the Company as a straight-lease transaction as defined in Section 854(15) of the New York State General Municipal Law;
- (B) The Agency will grant an exemption from state and local sales and use taxes with respect to the qualifying personal property portion of the Facility;
- (C) The Agency will grant an exemption from mortgage recording tax; and
- (D) The Agency will grant an exemption from general real property taxation with respect to the Facility, and the Company will pay certain contractual payments in lieu of taxes, as agreed to by the Company and the Agency, for the benefit of affected tax jurisdictions (such contemplated financial assistance as set forth in A,

B, C, and D herein being collectively hereinafter referred to as the "Financial Assistance").

WHEREAS, the Agency has agreed to provide Financial Assistance to the Company for the purpose of undertaking the improvement of the Facility; and

WHEREAS, on the date ("Closing Date") the Company executed and delivered a deed and bill of sale conveying title to the Facility to the Agency ("Company Transfer"), the Agency, as landlord, and the Company, as tenant, entered into a certain lease agreement (the "Lease Agreement"), pursuant to which the ~~Company has agreed, among other things, to construct and install the BEC Facility and Equipment on behalf of the Agency, and to lease the Facility from the Agency on the terms and conditions set forth therein.~~

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

1. **Representations and Covenants.**

(a) By the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(i) The Company is a business corporation duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware and is authorized to do business in New York State and has full legal right, power

and authority to execute, deliver and perform this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of this Agreement, will (A) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Company's Certificate of Incorporation or By-laws, as amended, or any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien (as defined in Paragraph 22 hereof) of any nature upon any of the Property (as defined in Paragraph 22 hereof) of the Company under the terms of any such law, ordinance, Certificate of Incorporation or By-laws, as amended, restriction, agreement or instrument, (B) require consent (which has not been heretofore received) under any corporate restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (C) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company, other than the approval of the Article X Application (as defined in Paragraph 22 hereof) and any other governmental or judicial approvals not required as of the Closing Date, including but not limited to any approval from the



(iii) This Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(b) By the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

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this Agreement. This Agreement has been duly authorized, executed and delivered by the Agency.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-laws, restriction, agreement or instrument.

(iii) This Agreement constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(iv) As of the Closing Date, no litigation at law or in equity or proceeding before any Federal, State or local governmental agency involving the Agency is pending or, to the best of its knowledge, after due inquiry, threatened, challenging the Agency's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other transaction of the Agency which is similar hereto, or would materially and adversely affect any of the transactions contemplated by this Agreement.

2. **Tax Exempt Status of Facility.**

(a) **Assessment of Facility.** Pursuant to Section 874 of the Act and Section 412-a of the New York Real Property Tax Law ("RPTL"), the parties hereto understand that, upon the first assessment roll of the Town of Bethlehem (the "Town") after the first taxable status date of the Town after the Company Transfer and the execution and delivery of the Lease Agreement between the Agency and the Company, and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, the Facility (i) shall be assessed by the Town and by the various other taxing entities which hereafter may have assessment jurisdiction over the Facility including without limitation the Bethlehem Central School District ("School District"), the County of Albany ("County") and any other political unit wherein the Facility is located (all of such taxing entities being hereinafter collectively referred to as "Taxing Entities" and individually referred to as a "Taxing Entity") and (ii) should be listed as exempt upon the assessment rolls of the respective Taxing Entities. The Company shall, promptly following the Company Transfer and the execution and delivery of the Lease Agreement, take such action as may be necessary to ensure that the Facility shall be assessed and listed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the Company Transfer and the execution and delivery of the Lease Agreement (including without limitation ensuring that a form RP-412-a relating to the Facility is filed with the Town Assessor and with each other assessor charged with preparing the assessment rolls for the various Taxing Entities) and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, but in no event after the Agency transfers title to the Facility to the Company. The Company shall take such further action as may be necessary to maintain such exempt

assessment. The Agency agrees to use its best efforts to assist the Company to both obtain and maintain such exempt assessment. As part of the parties' obligations hereunder with respect to obtaining and maintaining an exempt assessment for the Facility, the parties approve the "Instructions to Assessor" attached as Exhibit B hereto, and the Agency agrees to present these "Instructions to Assessor" to the Town Assessor promptly following the execution and delivery of this Agreement. Notwithstanding the foregoing, neither party agrees or admits that the fair market value of the Facility is the value(s) set forth on Exhibit B. The parties hereto understand that the Facility will not be entitled to such exempt status on the tax rolls until after the Town's March 1, 2002 taxable status date.

(b) Special District Assessments. The parties hereto understand that the tax exemption that is being extended to the Agency by Section 874(1) of the Act and Section 412-a of the RPTL does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company shall pay all special assessments and special ad valorem levies (collectively, the "Special District Assessments") lawfully levied and/or assessed against the Facility for any special improvement districts or special districts (collectively, the "Special Districts"), but such Special District Assessments paid by the Company shall be credited against the PILOT Payments (as defined in Paragraph 3(b) below) for the same year in which the Special District Assessments are paid. Notwithstanding the foregoing and except as may be otherwise agreed between the parties, all Special District Assessments paid by the Company each year shall be credited against and deducted from the PILOT Payments as follows:

(i) All Special District Assessments for the Bethlehem Public Library and any other such charges which are or may be listed on the annual School District tax bill, which is currently issued each year in September ("School District Special District Assessments") shall be deducted from the School District's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b).

(ii) All other Special District Assessments (other than School District Special District Assessments) which are or may be listed on the annual Town and County tax bill, which is currently issued each year in January or which may be billed separately, shall be deducted from the Town's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b). Such Special District Assessments currently include the Selkirk Fire Department and the Bethlehem Ambulance.

(c) Additional Megawatt Facilities. This Agreement applies to the Facility, and the PILOT Payments shall not increase or decrease based on the construction cost of the Facility or any modifications, repairs, additions or deletions thereto so long as no additional structures or facilities are added to the Facility which would increase the Megawatt Rating ( the "Additional Megawatt Facilities"). Notwithstanding anything herein to the contrary, the parties hereto agree that in the event the Company decides to construct any Additional Megawatt Facilities, this Agreement shall not apply to any such Additional Megawatt Facilities, and the Company will approach the Agency for purposes of entering into a separate written agreement regarding payments in lieu of taxes with respect to such Additional Megawatt Facilities. In the event the Agency and the Company agree to enter into such a separate written agreement, the

provisions of such agreement shall control with respect to payments in lieu of taxes relating to the Additional Megawatt Facilities. If the parties cannot reach agreement, then such Additional Megawatt Facilities shall not be entitled to the exemption from taxes as provided for in the Act.

3. **Payments in Lieu of Taxes.**

(a) **Prior Tax Payments.** The parties acknowledge that the Company (i) has paid all real property taxes and assessments payable to all Taxing Entities with respect to the Facility for the calendar year 2002, (ii) has paid all real property taxes payable to the School District with respect to the Facility for the School District's fiscal year of July 1, 2001 to June 30, 2002 and (iii) will pay the real property taxes and assessments payable to the Town, County and Special Districts with respect to the Facility for the fiscal tax year of each of the Town, County and Special Districts of January 1, 2002 to December 31, 2002 as otherwise agreed to by the Company and the Town.

(b) **Agreement to Make PILOT Payments.** The Company agrees that it shall make annual payments in lieu of property taxes (the "PILOT Payments") to the Agency on behalf of the respective Taxing Entities in the amounts hereinafter provided. For the School District fiscal year beginning July 1, 2002, and ending June 30, 2003, and provided the Facility is then owned by the Agency, the Company shall, on or before September 30, 2002, make PILOT Payments to the Agency in the amount of \$3,370,541.00 for the School District and \$231,445.00 for the Bethlehem Public Library. Commencing with calendar year 2003 and the Town/County/Special District fiscal tax years beginning January 1, 2003, and continuing through and including the last day of the calendar year 2023, so long as the Facility is owned by the

Agency, the Company shall make the following PILOT Payments for the following calendar years, except as may be reduced by credits for Special District Assessments as provided for above:

Schedule of PILOT Payments

Note: Special District Assessments paid by the Company shall be deducted from the PILOT Payments described below.

<u>Calendar Year</u>	<u>Town PILOT Payments<sup>1</sup></u>	<u>School District PILOT Payments<sup>2</sup></u>	<u>Total</u>
2003	\$800,000	\$3,200,000	\$4,000,000
2004	\$575,000	\$2,300,000	\$2,875,000
2005	\$589,375	\$2,357,500	\$2,946,875
2006	\$604,109	\$2,416,438	\$3,020,547
2007	\$619,212	\$2,476,849	\$3,096,061
2008	\$634,692	\$2,538,770	\$3,173,462
2009	\$650,560	\$2,602,239	\$3,252,799
2010	\$666,824	\$2,667,295	\$3,334,119
2011	\$683,494	\$2,733,978	\$3,417,472
2012	\$700,582	\$2,802,326	\$3,502,908
2013	\$718,096	\$2,872,385	\$3,590,481
2014	\$736,049	\$2,944,194	\$3,680,243
2015	\$754,450	\$3,017,799	\$3,772,249
2016	\$773,311	\$3,093,244	\$3,866,555
2017	\$792,644	\$3,170,575	\$3,963,219
2018	\$812,460	\$3,249,840	\$4,062,300
2019	\$832,771	\$3,331,086	\$4,163,857
2020	\$853,591	\$3,414,363	\$4,267,954
2021	\$874,931	\$3,499,722	\$4,374,653
2022	\$896,804	\$3,587,215	\$4,484,019
2023	\$919,224	\$3,676,895	\$4,596,119

<sup>1</sup> "Town PILOT Payments" are 20% of each annual PILOT Payment to the Agency, for the benefit of the Town and the County, and any special improvement district in which the Facility may be located except for any such district formed by or on behalf of the School District.

(c) Payments after December 31, 2023. Beginning in 2024 and thereafter for so long as the Facility is owned by the Agency, the January and September PILOT Payments shall be equal to the product of the then current assessed value of the Facility as provided for in and established pursuant to RPTL § 520 or any other applicable law, and (taking into account any exemption available under applicable law) as determined by the Town, multiplied by the then current applicable tax rates for the applicable Taxing Entities.

(i) In addition to the PILOT Payments described in Paragraphs 3(b) and (c) above, the Company agrees that it will make additional PILOT Payments in accordance with this subparagraph. If the BEC Facility operates at an average capacity factor percentage above 80% (the “Baseline Capacity Factor”) for any two-year period preceding the year of possible payment, the PILOT Payments will increase by \$100,000 for each 1% of actual capacity factor performance (the “Actual Capacity Factor”) above the Baseline Capacity Factor (the “Performance Contingency Payment”), but such Performance Contingency Payments shall not exceed \$1,000,000 in any year. The Performance Contingency Payments shall be adjusted to include any fraction of 1%, e.g., if the average Actual Capacity Factor were 81.5%, the Performance Contingency Payment would be \$150,000.

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operation, to June 30 of the second successive year thereafter (the “Actual Capacity Factor Performance Period”).

(iii) The Actual Capacity Factor for the BEC Facility shall be a percentage determined by dividing (A) the actual output of electricity measured in megawatt hours by the BEC Facility during the Actual Capacity Factor Performance Period, measured at the “delivery point,” which is the point of interface between the Niagara Mohawk Power Corporation transmission system and the BEC Facility, by (B) the product of the average megawatt capability of the BEC Facility (namely 781 megawatts) multiplied by the total hours over the Actual Capacity Factor Performance Period (using 8760 hours per year for 2 years except that 8784 hours shall be used when the February during any Actual Capacity Factor Performance Period occurs in a leap year). Thus:

Actual Capacity Factor = Measured plant generation (Mwh)

Plant capacity (MW) x hours in an Actual Capacity  
Factor Performance Period

(iv) The determination shall be made within sixty days after each Actual Capacity Factor Performance Period.

(v) These Performance Contingency Payments shall be payable, if applicable, to the Agency beginning in the third full calendar year after the BEC Facility commences commercial operation and shall be split with 80% payable in September and 20% payable in the following January when the PILOT Payments are made. In addition, the

Company shall include with the payments a calculation of the Performance Contingency Payments. The Agency will allocate and distribute any such payments to the Taxing Entities in the same percentage shares as the PILOT Payments. The parties presently anticipate commencement of commercial operations of the BEC Facility in 2004, and therefore, based on that, these Performance Contingency Payments would first be calculated in July/August 2007 based on two full years of operation in 2005 and 2006 and be payable, on an allocated basis, in September 2007 and January 2008.

(vi) There will be no Performance Contingency Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

(vii) Any Performance Contingency Payments will not be increased or decreased because of any modifications, repairs, additions or deletions to or from the BEC Facility, or any increase or decrease in the currently estimated construction cost thereof, so long as the Megawatt Rating is not increased.

(viii) This provision for Performance Contingency Payments shall not apply to the operations of the existing Albany Steam Station.

(e) Billing and Time of Payments. Except for the September 2002 PILOT Payment and any PILOT Payments in 2024 or thereafter, the Company shall make the annual PILOT Payments set forth in Paragraph 3(b) and (d) in two installments as set forth therein. The first 20% installment (the "Town PILOT Payments") shall be payable by the Company not later

than January 30 of each calendar year. The second 80% installment (the "School PILOT Payments") shall be payable by the Company not later than September 30 of each such calendar year. The Agency shall send bills to the Company for each installment, with the bill for the January installment to be issued on or about January 1 and the bill for the September installment to be issued on or about September 1, beginning with a bill for the September 2002 PILOT Payment. The Agency shall distribute any portion of the PILOT Payments received from the Company to any other Taxing Entity entitled to a portion thereof. The Company shall have no obligation to ensure appropriate distributions by the Agency and shall be deemed released from any further obligations for any such payment once it is made to the Agency.

(f) Method of Payments. All payments by the Company hereunder shall be paid in lawful money of the United States of America.

(g) Fiscal Year. Each PILOT Payment covers the fiscal year of each Taxing Entity in which the payment date for the PILOT Payment occurs.

4. Late Payments.

(a) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(b) Thereafter. If the Company shall fail to make any payment required by this Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the

Company until such payment in default shall have been made in full, and the Company shall pay the same together with (1) a late payment penalty of one percent (1%) per month on the delinquent amount for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per annum, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

(c) Distributions by Agency to Taxing Entities. Any penalties or interest due to any Taxing Entity for late payment or distribution of any PILOT Payment shall be paid by the Agency and not the Company, provided the Company has made any such PILOT Payment in a timely manner or has paid any penalty or interest due thereon as set forth in subparagraphs (a) and (b) above.

5. Credit for Taxes Paid.

(a) The parties agree that should under any subsequently adopted State or local law the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other general governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including (i) sales and use taxes, and (ii) special assessments of any nature, special ad valorem charges of any nature or governmental charges in the nature of utility charges, including, but not limited to, water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company's obligation hereunder to make PILOT Payments in such calendar year shall be reduced by the

amounts which the Company shall have so paid or be obligated to pay to such Taxing Entity in such calendar year. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Paragraph 5, such notice to be given by the Company at least 10 days prior to the final date on which such PILOT Payment is due pursuant to the provisions of Paragraph 3.

(b) In the event that all, or substantially all, of the Facility is declared to be subject to taxation for real property taxes or assessments (other than special assessments) by an amendment to the Act, other legislative charge, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall be null and void.

6. **Characterization of PILOT Payments.** The parties acknowledge that in the New York Public Service Commission ("Commission") Order dated April 18, 2000, approving the sale of the Albany Steam Station to the Company, the Commission determined that the purchase price for the Albany Steam Station established the fair market value thereof. (Case 94-E-9-0098, pg. 28). The parties also acknowledge that if the Town and other Taxing Entities levied taxes on the existing Albany Steam Station based upon the Commission's determination that the Albany Steam Station's fair market value is represented by the purchase price the Company paid for such facility, the total real property taxes, special assessments and special ad valorem levies thereon by the Taxing Entities (collectively, the "Taxes") for years 2000 through 2003 would be substantially less than the PILOT Payments for 2002-2003 as described in Paragraph 3 hereof or the taxes for 2000-2001 as described in that certain Memorandum of

Understanding dated as of May 31, 2001 among negotiators for the Company and the Agency (the "MOU"). The parties also acknowledge (without agreeing thereto) that the most current appraisal of the fair market value of the Albany Steam Station and other real property located adjacent thereto by the New York Office of Real Property Services ("ORPS") includes a value based upon the cost valuation methodology of \$82.6 million. The Agency acknowledges that to the extent such PILOT Payments provided for in Paragraph 3 hereof or the taxes provided for in the MOU exceed an appropriate level of Taxes on the Albany Steam Station, such excess constitutes a community benefit to the respective Taxing Entities. The Company acknowledges that, notwithstanding the foregoing, the Agency and the Taxing Entities will treat the full amount of the PILOT Payments as payments in lieu of taxes, special assessments and special ad valorem levies. If the Taxes were based upon the ORPS value as indicated above, the community benefit difference between such estimated Taxes and the PILOT Payments or taxes provided for herein and in the MOU is as follows:

Year	Approximate Taxes Based on ORPS Value of \$82.6 million	PILOT Payments or Taxes per this Agreement and the MOU	Community Benefit
2000	\$1,980,000	\$5,500,000	\$3,520,000
2001	\$2,065,000	\$5,000,000	\$2,935,000
2002	\$2,150,000	\$4,500,000	\$2,350,000
2003	\$2,230,000	\$4,000,000	\$1,770,000

7. **Grievance Proceeding.** This Agreement in no way waives any right of the Company or the Agency to at any time initiate a grievance proceeding, or to otherwise challenge the assessed valuation of the Facility as determined by the Town Assessor or the assessor of any other Taxing Entity. The Agency acknowledges that the Company shall be deemed to be “a person whose property is assessed” or “a person authorized in writing” as provided in Section 524 of the RPTL and an “aggrieved person” as provided in Article 7 of the RPTL. Except as otherwise provided in Paragraph 5, the results of any grievance proceeding or other challenge to the assessed valuation of the Facility shall not reduce or otherwise affect the PILOT Payments to be made by the Company pursuant to Paragraph 3(b) or (d).

8. **No Agency Representation.** Notwithstanding anything to the contrary contained herein, the parties hereto acknowledge and agree that the Agency has neither made nor hereby makes any representation or warranty to the Company as to the availability of, or entitlement of any person to, any exemption from taxation by any governmental body under the laws of the State for the Facility or any of the transactions contemplated herein.

9. **Transfer of Title to Company.** Title to the Facility may be conveyed by the Agency to the Company (the “Agency Transfer”) pursuant to the terms and provisions of the Lease Agreement. In the event of an Agency Transfer, the following provisions shall apply:

(a) After the date of the Agency Transfer, the Facility shall become subject to taxes and assessments in accordance with RPTL Sections 302 and 520. Notwithstanding the foregoing, there shall be deducted from such taxes and assessments any PILOT Payments previously paid pursuant to this Agreement by the Company relating to any period of time after

the date of the Agency Transfer. If any Taxing Entity refuses to permit such a deduction, the Company shall be entitled to receive and collect from any such Taxing Entity the amount which would have been deductible pursuant to the terms hereof within thirty (30) days of such refusal.

(b) The PILOT Payments provided for herein shall no longer apply or be payable in connection with the Facility, and this Agreement shall terminate, except that the provisions of this Paragraph and Paragraphs 10 and 13 shall survive any such termination.

(c) Neither the Agency nor any of the Taxing Entities shall be entitled to collect or receive any taxes and assessments on the Facility other than the PILOT Payments provided for herein related to the period of time before the Agency Transfer, provided the Company has made such payments and has paid the Agency's reasonable and necessary fees and expenses as provided for in the Lease Agreement.

(d) The Company shall not be entitled to any refund of PILOT Payments provided for herein and paid by the Company, except as provided in Paragraph 9(a) above.

10. **No Recourse; Limited Obligation of Agency.**

(a) **No Recourse.** All covenants, stipulations, promises, agreements and obligations (collectively, the "**Obligations**") of the Agency contained in this Agreement shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "**Employee of the Agency**") in his individual capacity, and no recourse under or upon any Obligation contained in this Agreement, or for any claim based thereon or otherwise in respect hereof, shall be had against any past, present or future Employee



of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person so executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement, it being expressly understood that this Agreement contains solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement or under or by reason of the Obligations, contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the Obligations contained in this Agreement implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. Except for the last sentence of Paragraph 9(a) hereof, the Obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligation of the State of New York or of the Town of Bethlehem, New York and neither the State of New York, nor the Town of Bethlehem, New York shall be liable thereon, and further, such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease or other disposition of the Facility.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, no order or decree of specific performance with respect to any of the obligations of

the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (x) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such request, and (y) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request; provided, however, that no limitation on the obligations of the Agency contained in this Paragraph by virtue of any lack of assurance provided in subparagraph (c)(ii) hereof shall be deemed to prevent the occurrence and full force and effect of any default hereunder. The limitations provided for in subparagraphs (c)(ii)-(iv) shall not apply

to the Agency's obligation to distribute PILOT Payments as provided for in Paragraph 3(e) and to pay penalties or interest as provided for in Paragraph 4(c).

(d) Agency Reliance. The Agency may rely conclusively on any notice, certificate or other document furnished to it under this Agreement and reasonably believed by it to be genuine. Except for the Agency's obligations under Paragraphs 3(e) and 4(c), the Agency shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or in good faith omitted to be taken by it and reasonably believed to be beyond such discretion or power, or taken by it pursuant to any direction or instruction by which it is governed under this Agreement, or omitted to be taken by it by reason of the lack of direction or instruction required for such action under this Agreement, and shall not be responsible for the consequences of any error of judgment reasonably made by it. A permissive right or power to act shall not be construed as a requirement to act, and no delay in the exercise of a right or power shall affect the subsequent exercise thereof. The Agency shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person except by its own members, officers and employees.

11. Events of Default. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay or cause to be paid any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of thirty (30) days after written notice to the Company stating that such payment is due and payable. Any

such notice shall identify, with reasonable detail, the amount of the payment which is due, the payee, the due date, and the basis or requirement for such payment.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement hereunder on its part to be observed or performed (other than as referred to in Paragraph (a) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the default within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default. Any such notice shall describe, in reasonable detail, the nature of the default and the basis or requirement for action or performance by the Company for which the Agency has determined the Company to be in default.

(c) An Event of Default under and as defined in the Lease Agreement.

## 12. **Remedies on Default.**

(a) General. Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the obligations, agreements or covenants of the Company under this Agreement; provided, however, that the Agency shall not be entitled to sell the Facility.

(b) Lease Agreement. In addition, an Event of Default hereunder shall constitute an event of default under the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Facility to the Company, thus subjecting the Facility to immediate full taxation pursuant to RPTL Section 520.

(c) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(d) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

13. Payment of Attorney's Fees and Expenses. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, and provided the Agency or Taxing Entity is successful in such collection effort, pay to the Agency or such Taxing Entity,

as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

14. **Remedies; Waiver and Notice.**

(a) **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

(b) **Delay.** No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(c) **Notice Not Required.** In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Lease Agreement or applicable law.

(d) **No Waiver.** In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(e) Paragraph Headings Not Controlling. The headings of the several Paragraphs in this Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agreement.

15. Notices. All notices, demands, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chairman

With a copy to:

McNamee, Lochner, Titus & Williams, P.C.  
75 State Street  
P.O. Box 459  
Albany, New York 12201-0459  
Attention: Thomas P. Connolly, Esq.

To the Company:

PSEG Power New York Inc.  
80 Park Plaza  
Newark, New Jersey 07102  
Attention: Legal Department

and

PSEG Power New York Inc.  
80 Park Plaza, Mail Code T6B  
Newark, New Jersey 07102  
Attention: Manager – Corporate Properties

and

PSEG Power New York Inc.  
c/o Albany Steam Station  
Rt. 144  
Glenmont, New York 12077  
Attention: Plant Manager

With a copy to:

Nixon Peabody LLP  
Clinton Square  
P.O. Box 31051  
Rochester, New York 14603-1051  
Attention: John B. Hood, Esq.

16. **Amendment, Changes and Modifications of Agreement.** This Agreement may not be amended, changed, modified, altered or terminated except in writing executed by the parties hereto. Notwithstanding anything herein to the contrary, any amendment which changes, modifies or alters the allocation of the PILOT Payments described herein shall not be effective without the approval of the party against whom enforcement of the change, modification or alteration is sought.

17. **Applicable Law.** This Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflicts of laws principles.



18. **Binding Effect; Assignment.**

(a) This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Company, the Agency and the respective Tax Entities.

(b) This Agreement may be assigned by the Company without the consent of the Agency. The Company shall provide written notice of any assignment to the Agency prior to the effective date of such assignment. Any assignment shall be on the following conditions, as of the time of such assignment:

(i) No assignment shall relieve the Company from secondary liability for any of its obligations hereunder in the event that the assignee shall default in its obligations hereunder or under this Agreement following a material breach which remains uncured for the requisite period and following the exercise by the Agency of its remedies hereunder and pursuant to the Lease Agreement;

(iii) Any assignee shall assume the obligations of the Company hereunder;

(iv) The Company shall, within ten (10) business days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of each the assignment and the instrument of assumption;

(v) The proposed assignee's use of the Facility shall constitute a "project" under the Act; and

(vi) No Event of Default exists under this Agreement.

(c) It is anticipated that the Company may pledge and assign its rights to and interest in this Agreement to the Lender (as defined in the Lease Agreement) as security for the payment of the principal of and interest on the Loans (as defined in the Lease Agreement). The Agency hereby acknowledges and consents to such pledge and assignment by the Company.

19. **Company to Maintain Its Existence; Conditions Under Which Exceptions Permitted.** The Company agrees that during the term of this Agreement the Company will maintain its corporate existence, will not dissolve or otherwise dispose of all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default specified herein shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States of America, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another such domestic corporation, all or substantially all of its assets as an entirety, provided (a) that the surviving, resulting, or transferee corporation, as the case may be, is incorporated under the laws of the State or qualifies to do business in the State, and (b) that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Company under this Agreement and any other agreement securing the Company's performance of its obligations hereunder.

20. **Severability.** In the event any immaterial provision of this Agreement shall for any reason be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. In the event any material provision of this Agreement is so held to be invalid or unenforceable, the parties shall negotiate in good faith to attempt to amend this Agreement to accomplish the objectives contemplated herein.

21. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. **Definitions.** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned below:

- “**Article X Application**” means the application by the Company to the New York State Board on Electric Generating Siting and the Environment for a Certificate to Construct the Facility pursuant to Article X of the Public Service Law.
- “**Lien**” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’,

materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

- "Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

23. **Energy Reimbursement Payments.** The Company shall make energy reimbursement payments ("Energy Reimbursement Payment") to the Agency, which shall be used by the Agency for its economic development purposes and activities. Such payments shall be made by the Company as soon as practicable after the end of each Quarter (as defined herein) of each Contract Year (as defined herein) following the receipt of all necessary data by the Company to calculate such payments as provided for herein:

(a) Each payment shall be accompanied by the actual calculation of such payment utilizing the following formula:

- *Energy Reimbursement Payment* = [Five Percent Discount] × [Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter] × [Agency Load] × [BEC Facility Capacity Factor for the Quarter] × hours in the Quarter × [85% efficiency factor for the First Discount Period and Second Discount Period, and 75% efficiency factor for the Third Discount Period and following the Third Discount Period]

(b) The following definitions shall apply to the provisions for Energy Reimbursement Payments in this paragraph:

- “BEC Facility” means the combined cycle plant constructed on the Land. The BEC Facility nameplate capability is 763 megawatts for the summer capability period (May through October) and 800 megawatts for the winter operating period (November through April).
- “Five Percent Discount” means five percent (5%) of the price posted by the New York Independent System Operator (“NYISO”) Day Ahead Market (“DAM”) Locational Based Marginal Price (“LBMP”).
- “Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter” means the sum of the products for the Quarter of the NYISO DAM LBMP for each hour in which the BEC Facility generates power multiplied by the megawatts generated during the hour with that sum divided by the total megawatt hours generated during each of said hours for the Quarter (e.g.,  $[[\$3 \text{ DAM LBMP Clearing Price for hour ending 1 on } 10/1/04 \times 10 \text{ megawatts generated for the hour}] + [\$6 \text{ DAM LBMP Clearing Price for hour ending 2 on } 10/1/04 \times 20 \text{ megawatts generated for the hour}]] \div [30 \text{ megawatt hours generated for the period}] = \$5 \text{ generator weighted DAM LBMP clearing price for the BEC Facility bus.}$

- “Contract Year” means the 12 month period starting with the first full calendar month of commercial operation of the BEC and each successive 12 month period thereafter during the term of this Agreement.
- “Quarter” means the successive three month periods in each Contract Year, beginning with the first day of each Contract Year.
- “Agency Load” shall be as follows:
  - 3 megawatt hours per hour for each Quarter of the five year period commencing with the first day of the first Contract Year (“First Discount Period”)
  - 6 megawatt hours per hour for each Quarter of the five year period following the First Discount Period (“Second Discount Period”)
  - 9 megawatt hours per hour for each Quarter of the five year period following the Second Discount Period (“Third Discount Period”)
  - 12 megawatt hours per hour for each Quarter of the five year period following the Third Discount Period
- “BEC Facility Capacity Factor for the Contract Quarter” means the actual capacity factor calculation for the BEC Facility for the Contract Quarter as specified in the real time generation detail, verifiable through station metering.

The Capacity Factor for the Quarter is calculated as the megawatt hours generated

by the plant over the Quarter divided by the product of the average nameplate capability, 781 megawatts, of BEC multiplied by the hours in the Quarter.

(c) The Agency shall have the right to request adjustment of any payment made by the Company for any errors in arithmetic, computation, estimating or otherwise no later than twelve (12) months after the date that the payment is rendered. Any request for adjustment shall be in writing and shall state the specific basis for the adjustment. A payment shall be binding on the Agency twelve (12) months after the payment is made.

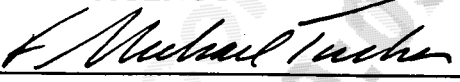
(d) The Agency shall be responsible for and pay, or cause to be paid, any and all taxes levied on the Energy Reimbursement Payments made by the Company hereunder.

(e) If any of the items used to compute the Energy Reimbursement Payment becomes unavailable, then the parties shall use good faith efforts to develop a substitute for such item in order to place the parties in the same economic position each would have been in had such item continued to have been available.

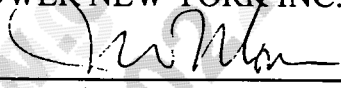
(f) There will be no Energy Reimbursement Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

IN WITNESS WHEREOF, the Agency and the Company have duly executed this Agreement as of the day and year first above written.

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: F. Michael Tucker  
Title: Chairman

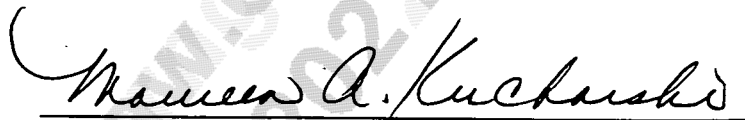
PSEG POWER NEW YORK INC.

By:   
Name: Jeffrey W. Moore  
Title: Vice President



STATE OF NEW YORK     )  
                                      )  
COUNTY OF ALBANY     )     SS:

On the 5th day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared F. Michael Tucker, 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 Agreement for Payment in lieu of Taxes, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Agreement for Payment in lieu of Taxes, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



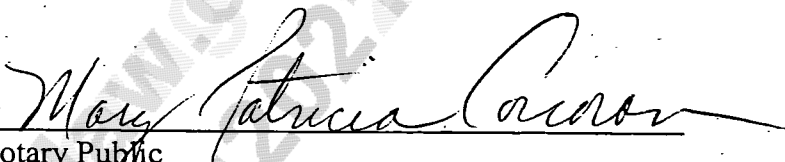
Notary Public

MAUREEN A. KUCHARSKI  
Notary Public, State of New York  
No. 01KU4855324  
Qualified in Rensselaer County  
Commission Expires June 23, 2002

STATE OF NEW JERSEY )  
 )  
COUNTY OF ESSEX )

ss:

On the 5 day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey W. Moore, 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 Agreement for Payment in lieu of Taxes, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Agreement for Payment in lieu of Taxes, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

  
Notary Public

MARY PATRICIA CORCORAN  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/6/2006

Exhibit A

(Description of the Land)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem, County of Albany and State of New York, being further described as follows:

Beginning at a point at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara Mohawk Power Corporation ("Niagara") by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, Page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following seven (7) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08°37'25" W a distance of 212.38 feet to a point; (2) N 02°34'59" W a distance of 292.44 feet to a point; (3) N 03°04'27" E a distance of 800.80 feet to a point; (4) N 07°22'16" E a distance of 831.38 feet to a point; (5) N 13°31'57" W a distance of 30.80 feet to a found concrete monument; (6) N 11°17'47" W a distance of 229.80 feet to a found concrete monument; (7) N 28°40'11" W a distance of 8.60 feet to a point therein where the same is intersected by the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following four (4) courses along said dividing line; (1) N 66°48'12" E through a metal rod and cap set at a distance of 2.45 feet from the east line of New York State Highway #193, Route #144 (River Road) a total distance of 213.71 feet to a rod and cap set; (2) S 77°11'59" E a distance of 89.66 feet to a metal rod and cap set; (3) N 67°55'30" E a distance of 646.83 feet to a metal rod and cap set; (4) N 63°05'59" E passing through a metal rod and cap set at 217.64 feet a total distance of 264.94 feet to a point on the westerly line of the "BEACON ISLAND DIKE" as shown on a plan entitled "Albany Steam Station Lands Under Water at Island Creek" prepared by Niagara and having a drawing number of G-3539-E; thence S 08°57'11" E along said westerly line a distance of 86.36 feet to a point; thence N 78°22'58" E a distance of 122.49 feet to a point on the U.S. Pier Head line as established by the U.S. Army Corps of Engineers May 10, 1934 and being further described as being point number 218A as shown on the said plan entitled "Albany Steam Station Lands Under Water at Island Creek"; thence S 11°37'12" E along said Pier Head line a distance of 2085.82 feet to a point in the southeasterly corner of lands conveyed to Niagara as described in Book 1228 of Deeds, Page 195 being a corner in the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following five (5) courses along said dividing line: (1) S 67°30'33" W a distance of 130.00 feet to a metal rod and cap set; (2) S 07°29'12" E a distance of 279.62 feet to a point; (3) S 75°58'09" W a distance of 827.00 feet to a metal rod and cap set; (4) N 26°11'21" W a distance of 148.73 feet to a found concrete monument; (5) S 67°30'33" W a distance of 833.05 feet to the point of beginning (the "Premises"), comprising of an area of 83.50 acres as shown on a Survey of James M. Zuccolotto, N.Y.S.P.L.S., dated November 16, 1999, last revised March 13, 2000, consisting of four (4) sheets, and filed in the Albany County Clerk's Office in Map Drawer 172 as Map No. 10859 on March 20, 2000 (the "Survey").

Bearings and coordinates refer to the N.Y. State Plane Coordinate System (Eastern Zone - NAD '83) based on control established by G.P.S. and adjusted to the published coordinates for N.G.S. horizontal control stations "Rensport", "Schodack" and "New Scot". Distances are grid distances.

BEING the same premises or a portion thereof described in the following instruments: deed from New York State Realty Terminal Company to Niagara recorded in the Albany County Clerk's Office in Book 1265 of Deeds at page 75; deed from Hudson River Estates, Inc. and the Delaware and Hudson Railroad Corporation to Niagara recorded in the Albany County Clerk's Office in Book 1307 of Deeds at page 479; Letters Patent issued June 10, 1953 to Niagara recorded in the Albany County Clerk's Office in Book 1376 of Deeds at page 75; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1420 of Deeds at page 367; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1491 of Deeds at page 139; and deed from Sun Oil Company to Niagara recorded in the Albany County Clerk's Office in Book 1228 of Deeds at page 195.

TOGETHER WITH an easement to build, maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a water main and related equipment over lands now or formerly owned by Niagara, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point, said point being the intersection of the northerly line of the Premises with the center line of an existing eight inch water main, said point being further described as being 13.5 feet $\pm$  easterly and 110 feet  $\pm$  southerly of center line station 71+43.58 of the former Delaware and Hudson Railroad Susquehanna Division spur to Cabbage Island, Railroad Valuation map V4-142-B; thence northerly parallel to and 10 feet distant easterly of the center line alignment of the said Delaware and Hudson Railroad line a distance of 2700 feet  $\pm$  to a point; thence westerly crossing said center line a distance of 27 feet  $\pm$  to a point; thence northerly parallel to and approximately 13.5 feet westerly of the center line of the former Delaware and Hudson Railroad line a distance of 2-15 $\pm$  feet to a point; thence northeasterly, northerly and northwesterly crossing the Island Creek Diversion Channel (Normans Kill) on the west side of a railroad bridge a distance of 355 feet  $\pm$  to a point; thence northwesterly a distance of 300 feet  $\pm$  to a point on the northerly line of lands now or formerly owned by Niagara, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH all right, title and interest of Grantor under a grant made by Hudson River Estates, Inc. to Niagara dated October 21, 1963 recorded in the Albany County Clerk's Office on January 17, 1964 in Book 1782 of Deeds at Page 245, a grant made by Albany Port District Commission to Niagara dated June 30, 1952 recorded in the Albany County Clerk's Office on July 10, 1952 in Book 1318 of Deeds at Page 385, as amended by an Amendment to

1952 Indenture of the Albany Port District Commission, dated May 11, 2000, recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 945 and under a letter agreement, dated June 12, 1952 between The Delaware and Hudson Railroad Corporation and Niagara, subject to any burdens set forth in the above-referenced grants or the above-referenced letter agreement.

TOGETHER WITH an easement to maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a forced main sanitary sewer line over lands now or formerly owned by Niagara and Consolidated Rail Corporation, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point at the intersection of the westerly line of New York State Highway #193, Route #144 (River Road) with the centerline of the existing 4" force main sanitary sewer, said point being approximately 175 feet south of New York State Survey Station 272+50, said survey station shown on drawings by the New York State Department of Transportation No. RC 45-28 River Road S.H. #193; thence northwesterly a distance of 424 feet± to a point; thence continuing northwesterly on a line deflecting to the right at an angle of 25° 42' a distance of 700 feet± to a point; thence continuing northwesterly on a line deflecting to the left at an angle of 42° 15' a distance of 508 feet± to a point; thence westerly on a line deflecting to the left at an angle of 45° a distance of 323 feet± to a point; thence northwesterly on a line deflecting to the right at an angle of 45° a distance of 67 feet ± to a point on the southerly line of the Feura-Bush-Glenmont Road, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT to the terms of a Grant of Easement for a sewer main between Consolidated Rail Corporation and Niagara dated December 17, 1992 and recorded in the Albany County Clerk's Office on December 30, 1993 in Book 2500 of Deeds at Page 391, as shown on a map annexed to the foregoing Grant of Easement identified as "Map NMP - 137 Albany Steam Station Detail of 4" Force Main Sanitary Sewer Crossing at Penn Central Railroad" at Book 2500 of Deeds at Page 630 and as shown on Sheet 4 of the Survey.

TOGETHER WITH an easement to install, maintain, repair, modify, enlarge, inspect, remove, patrol and replace a water service line to tap into the sixteen (16) inch water main described in an Indenture, made the 29th day of January, 1979 by and between Niagara and the Town of Bethlehem and recorded in the Albany County Clerk's Office on February 14, 2000 in Book 2650 of Deeds at page 108 over lands now or formerly owned by Niagara, 15 feet in width 7.5 feet on each side of the following described centerline:

Commencing at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara by

deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following three (3) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08° 37' 25" W a distance of 212.38 feet to a point; (2) N 2° 34' 59" W a distance of 292.44 feet to a point; (3) N 03° 04' 27" E a distance of 603.93 feet to a point; thence S 87° 31' E, crossing Route #144 (River Road) New York State Highway #193, a distance of approximately 67.5 feet to a point on the west line of said highway to the point and place of beginning of said centerline; thence S 87° 31' E through the lands now or formerly owned by Niagara approximately 20 feet to the existing Town of Bethlehem waterline and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT TO the terms of an easement granted to Niagara dated June 15, 1953 and recorded in the Albany County Clerk's Office on July 13, 1953 in Book 1365 of Deeds at Page 225, as shown on Sheets 2 and 3 of the Survey.

TOGETHER WITH the appurtenances, including riparian rights, if any, and all the estate and rights of Grantor in and to the Premises and together with all right, title and interest of Grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the Premises.

SUBJECT TO all other easements, covenants, restrictions and other encumbrances of record.

SUBJECT TO terms, covenants, conditions and provisions of the Letters Patent granted by the People of the State of New York recorded in the Albany County Clerk's Office in Liber 837 of Deeds at page 226, Liber 850 of Deeds at page 432 and Liber 1376 of Deeds at Page 75 to the extent they affect the Premises.

SUBJECT TO any and all right, title and interest the public may have in and to the public highways running through or adjacent to the Premises.

Being and intending to describe the same premises described in a deed from Niagara to Grantor dated May 11, 2000 recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 935.

TOGETHER WITH THE BENEFITS of a Sound Easement Agreement between Niagara and Grantor dated as of May 11, 2000 and recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 889.





Recording Office Time Stamp

New York State Department of Taxation and Finance  
**Combined Real Estate  
 Transfer Tax Return and  
 Credit Line Mortgage Certificate**

See instructions (TP-584-I) before completing this form. Please print or type.

**Schedule A—Information Relating to Conveyance**

<b>Grantor</b>		Name (if individual; last, first, middle initial)		Social Security Number	
<input type="checkbox"/> Individual	Town of Bethlehem Industrial Development Agency				
<input checked="" type="checkbox"/> Corporation	Mailing address				
<input type="checkbox"/> Partnership	445 Delaware Avenue				
<input type="checkbox"/> Other	City		State	ZIP code	Federal employer ident. number
	Delmar		New York	12054	
<b>Grantee</b>		Name (if individual; last, first, middle initial)		Social Security Number	
<input type="checkbox"/> Individual	PSEG Power New York Inc.				
<input checked="" type="checkbox"/> Corporation	Mailing address				
<input type="checkbox"/> Partnership	80 Park Plaza				
<input type="checkbox"/> Other	City		State	ZIP code	Federal employer ident. number
	Newark		New Jersey	07102	22 3692584

**Location and description of property conveyed**

Tax map designation			Address	City/Village	Town	County
Section	Block	Lot				
98	2	10.10	380 River Road		Bethlehem	Albany

**Type of property conveyed (check applicable box)**

- 1 ☐ 1 - 3 family house  
 2 ☐ Residential cooperative  
 3 ☐ Residential condominium  
 4 ☐ Vacant land  
 5 ☐ Commercial/Industrial  
 6 ☐ Apartment building  
 7 ☐ Office building  
 8 ☒ Other power plant

**Date of conveyance**

02 / 05 / 02  
 month day year

Percentage of real property conveyed which is residential real property 0 %  
 (see instructions)

**Condition of conveyance (check all that apply)**

- a. ☐ Conveyance of fee interest  
 b. ☐ Acquisition of a controlling interest (state percentage acquired \_\_\_\_\_ %)  
 c. ☐ Transfer of a controlling interest (state percentage transferred \_\_\_\_\_ %)  
 d. ☐ Conveyance to cooperative housing corporation  
 e. ☐ Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP 584, 1, Schedule E)  
 f. ☐ Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584, 1, Schedule F)  
 g. ☐ Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584, 1, Schedule G)  
 h. ☐ Conveyance of cooperative apartment(s)  
 i. ☐ Syndication  
 j. ☐ Conveyance of air rights or development rights  
 k. ☐ Contract assignment  
 l. ☐ Option assignment or surrender  
 m. ☐ Leasehold assignment or surrender  
 n. ☒ Leasehold grant  
 o. ☐ Conveyance of an easement  
 p. ☒ Conveyance for which exemption from transfer tax is claimed (complete Schedule B, Part III)  
 q. ☐ Conveyance of property partly within and partly without the date  
 r. ☐ Other (describe)

**Schedule B—Real Estate Transfer Tax Return (Article 31 of the Tax Law)**

**Part I - Computation of Tax Due**

1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III).....	<input checked="" type="checkbox"/> Exemption claimed	1	1.00
2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien).....		2	
3 Taxable consideration (subtract line 2 from line 1).....		3	
4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3.....		4	
5 Amount of credit claimed (see instructions and attach Form TP 584, 1, Schedule G).....		5	
6 Total tax due* (subtract line 5 from line 4).....		6	

**Part II - Computation of Additional Tax Due on the Conveyance of Residential Real Property for \$1 Million or More**

1 Enter amount of consideration for conveyance (from Part I, line 1).....	1	
2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property; see instructions).....	2	
3 Total additional transfer tax due* (1% of line 2).....	3	

\*Please make check(s) payable to the county clerk where the recording is to take place or if the recording is to take place in New York City, make check(s) payable to the NYC Department of Finance. If no recording is required, send this return and your check(s) made payable to the Department of Taxation and Finance, directly to the NYS Tax Department, TTTB -Transfer Tax, PO Box 5045, Albany NY 12205-5045.

For recording officer's use	Amount received Part I \$ _____ Part II \$ _____	Date received	Transaction number
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**Schedule B—(continued)****Part III - Explanation of Exemption Claimed in Part I, line 1 (check any boxes that apply)**

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) .....a ☐
- b. Conveyance is to secure a debt or other obligation .....b ☐
- c. Conveyance is without additional consideration to confirm, correct, modify or supplement a prior conveyance .....c ☐
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts .....d ☐
- e. Conveyance is given in connection with a tax sale .....e ☐
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F .....f ☐
- g. Conveyance consists of deed of partition .....g ☐
- h. Conveyance is given pursuant to the federal bankruptcy act .....h ☐
- i. Conveyance consists of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property .....i ☐
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a 1-, 2-, or 3-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment .....j ☐
- k. Conveyance is not a conveyance within the meaning of section 1401(e) of Article 31 of the Tax Law (attach documents supporting such claim) .....k ☐
- l. Other (attach explanation) conveyance from an IDA for nominal consideration .....l ☒

**Schedule C—Credit Line Mortgage Certificate (Article 11 of the Tax Law)**

Complete the following only if the interest being transferred is a fee simple interest.

I (we) certify that: (check the appropriate box)

- 1 ☐ The real property being sold or transferred is not subject to an outstanding credit line mortgage.
- 2 ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
- ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
- ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
- ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee or other officer of a court.
- ☐ The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.
- Please note: for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.
- ☐ Other (attach detailed explanation).
- 3 ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
- ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
- ☐ A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
- 4 ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. (Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City, make check payable to the NYC Department of Finance.)

**Signature (both the grantor(s) and grantee(s) must sign).**


The undersigned certify that the above return, including any certification, schedule or attachment, is to the best of his/her knowledge, true and complete.

Town of Bethlehem Industrial  
Development Agency

Grantor

Chairman  
TitlePSEG Power New York Inc.  
GranteeVice President  
Title

By:



By:



Reminder: Did you complete all of the required information in Schedules A and B? Were you required to complete Schedule C? If you checked e, f or g in Schedule A, did you complete TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in New York City, to the NYC Department of Finance? If no recording is required, send your check(s), made payable to the Department of Taxation and Finance, directly to the NYS Tax Department, TTTB-Transfer Tax, PO Box 5045, Albany NY 12205-5045.

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
(TOWN OF BETHLEHEM, NEW YORK)

and

PSEG POWER NEW YORK INC.

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LEASE AGREEMENT

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Dated February 5, 2002

Town of Bethlehem Industrial Development Agency  
(PSEG Power New York Inc. 2002 Facility)

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THIS LEASE AGREEMENT dated February 5, 2002 is between the TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 445 Delaware Avenue, Delmar, New York 12054 (the "Agency"), and PSEG POWER NEW YORK INC., a duly organized and validly existing Delaware corporation located in the Town of Bethlehem and authorized to do business in New York and having an office at 80 Park Plaza, Newark New Jersey 07102 (the "Company"). (The Agency and the Company are together referred to herein as the "Parties").

## RECITALS

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

The aforesaid Act authorizes the creation of industrial development agencies for the Public Purposes of the State;

The aforesaid Act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, civic, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living;

Pursuant to and in accordance with the provisions of the aforesaid Act, the Agency was created and is empowered under the Act to undertake the providing, financing and leasing of the facility described below;

The facility shall consist of the following: (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem (collectively the "Land"); (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the "Improvements"); and (3) the acquisition by the Agency and the installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the "Equipment") (the Land, the Improvements and the Equipment are hereinafter collectively referred to as the "Facility") including the following in connection with the appointment of the Company as the agent of the Agency, as they relate to the construction, erection and completion of such Facility, whether or not any materials or supplies described below are incorporated into or

become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), both existing and to be acquired, installed or placed in, upon or under such Facility;

The Agency proposes to acquire and lease the Facility and a third-party lender (the "Lender") may finance the cost thereof by making the Loans to the Company or an assignee of the Company (the "Owner");

The Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Plans and Specifications;

The Agency proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement; and

The Company may, subject to Section 9.3 hereof, sublease its interest in the Facility to the Owner, and in such case the Owner and the Company would enter into a Sublease Agreement with respect to the Facility (the "Sublease Agreement"). The Company may, subject to Section 9.3 hereof, assign (or collaterally assign) any of its rights hereunder to the Owner and/or the Lender.

## AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

### ARTICLE I

#### DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

### ARTICLE II

#### REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the

Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will cause the Land to be acquired, the Improvements to be constructed and the Equipment to be acquired and installed and will lease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution adopted on April 26, 2001, the Agency noted that its review of the Facility for conformance to the SEQR Act is superseded by Article X of the Public Service Law because the Company has pending an application for a Certificate to Construct the Facility pursuant to Section 164 of the Public Service Law.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-laws, restriction, agreement or instrument.

(e) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to utilize the Facility in the Town of Bethlehem, New York.

(g) As of the Closing Date, no litigation at law or in equity or proceeding before any Federal, State or local governmental agency involving the Agency is pending or, to the best of its knowledge, after due inquiry, threatened, challenging the Agency's authority to enter into the Agency Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Agency Documents or any other transaction of the Agency which is similar hereto, or would materially and adversely affect any of the transactions contemplated by this Agreement.

(h) Based upon representations made by the Company, the Facility constitutes a "project" as such quoted term is defined in the Act and the Agency covenants that it will neither take nor fail to take any action that will cause the Facility not to constitute a project.



Section 2.2      Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a business corporation duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware and is authorized to do business in New York State and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby, will (1) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Company's Certificate of Incorporation or By-laws, as amended, or any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Certificate of Incorporation or By-laws, as amended, restriction, agreement or instrument, (2) require consent (which has not been heretofore received) under any corporate restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company, other than the approval of the Article X Application and any other governmental or judicial approvals not required as of the Closing Date, including but not limited to any approval from the Federal Energy Regulatory Commission in connection with the construction and operation of the Facility. The Facility and the design, acquisition, construction and equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency for expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(c) Except as otherwise provided in the Mortgage, the Company shall perform or cause to be performed, for and on behalf of the Agency each and every obligation of the Agency under and pursuant to the Mortgage.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) Subject to its early termination right pursuant to Article XI hereof, the Company will, or cause the Owner to, complete the construction of the Facility in accordance with the terms and provisions of the Plans and Specifications subject to the approval of the Article X Application and any other governmental or judicial approvals not required as of the Closing Date, including but not limited to any approval from the Federal Energy Regulatory Commission in connection with the construction and operation of the Facility.

(f) The Facility is and will continue to be a "project," as such quoted term is defined in the Act. The Company will not take any action, or fail to take any action, which would cause the Facility to not constitute a "project" as such quoted term is defined in the Act.

(g) The completion of the Facility by the Agency and the lease thereof by the Agency to the Company will not result in the removal of a commercial, manufacturing or industrial plant of the Company from one area of the State to another area of the State.

(h) As of the Closing Date, no litigation at law or in equity or proceeding before any federal, State or local governmental agency involving the Company is pending or, to the best of its knowledge, after due inquiry, threatened, in which any liability of the Company is not adequately covered by insurance as required hereunder or in which any judgment or order would have a material adverse effect upon the business or assets of the Company or that would affect the Company's existence or authority to do business, the development, acquisition, rehabilitation, or operation of the Facility or the performance of any of its obligations hereunder.

### ARTICLE III

#### FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) good and marketable title to the Land, including the existing Albany Steam Station comprised of existing buildings, structures, switchyard equipment or other improvements thereon, and (ii) lien-free title to the Equipment in each case and will convey or cause to be conveyed to the Agency lien-free title to the Equipment and Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Company may obtain a title policy for the benefit of the Lender, and, if applicable, the Owner.

Section 3.3 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is and will be subject and subordinate to the Mortgage and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

## ARTICLE IV

ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY; MAKING OF THE  
LOANS

Section 4.1 Acquisition, Construction And Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will, or will cause the Owner to, acquire, construct and equip the Facility in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time with the written approval of the Owner and/or the Lender, which approval may not be unreasonably withheld but which may be subject to such conditions as the Owner or the Lender may deem appropriate.

(c) Title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility shall vest in the Agency immediately upon the Company, or the Owner, as the case may be, obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company, or the Owner, as the case may be, shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to acquire, construct and equip the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Improvements and acquiring and installing the Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the construction of the Improvements and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with construction and completion of the Improvements and the acquisition and installation of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(f) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law of the State applicable to the acquisition, construction and equipping of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. Except as provided in the preceding sentence, the

provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 4.2 Making of the Loans; Disbursements of Loan Proceeds. It is anticipated that the Lender may make the Loans to the Owner or the Company. Loan Proceeds shall be disbursed to the Company or Owner pursuant to the Loan Documents.

Section 4.3 Certificates of Completion. To establish the Completion Date, the Company shall deliver (or cause the Owner to deliver) to the Agency and the Lender a certificate signed by an Authorized Representative of the Company (or the Owner) (i) stating that acquisition, construction and equipping of the Facility has been completed in accordance with the Plans and Specifications therefor; (ii) stating that the commercial in-service date for the Facility has occurred; (iii) stating that the post in-service-date testing and warranty repairs have been completed; (iv) stating that the payment of all labor, services, materials and supplies used in such acquisition has been made or provided for; and (v) such certificates as may be satisfactory to the Lender, including without limitation, a final certificate of occupancy, if applicable.

Section 4.4 Completion by Company or Owner.

(a) In the event that the Net Proceeds of the Loans are not sufficient to pay in full all costs of acquiring, constructing and equipping the Facility in accordance with the Plans and Specifications, it is anticipated that the Company or Owner will agree to pay, for the benefit of the Agency and the Lender, all such sums as may be in excess of the Net Proceeds of the Loans. Title to all portions of the Facility installed or constructed at the Company's (or Owner's) cost or expense shall immediately upon such installation or construction vest in the Agency. The Company (or Owner) shall execute, deliver and record or file such instruments as the Agency or the Lender may request in order to perfect or protect the Agency's title to or the lien of the Mortgage on such portions of the Facility.

(b) The Company (or Owner) shall not be entitled to any reimbursement for such excess cost or expense from the Agency or the Lender nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company (or Owner) under this Lease Agreement.

Section 4.5 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company (or Owner) at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract and the Company shall have all rights to any recoveries or other relief that result from such action. The Company (or Owner), in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Company (or Owner) deems

reasonably necessary, and in such event the Agency, at the Company's (or Owner) expense, hereby agrees to cooperate fully with the Company (or Owner) and to take all action necessary to effect the substitution of the Company (or Owner) for the Agency in any such action or proceeding.

Section 4.6 Termination of Sales Tax Agency. The exemptions from sales tax arising from the appointment by the Agency of Company as agent for the Agency under this Lease Agreement and under the Agency's Sales Tax Agency Resolution adopted by the Agency on October 31, 2001 shall cease on the Completion Date.

**Section 4.7      Sales And Use Tax Exemption.**

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Facility may be exempted from those taxes due to the involvement of the Agency in the Facility. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Facility shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Facility prior to the Completion Date, or incorporated within the Equipment prior to the Completion Date. No operating expenses of the Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax.

(b) As a condition to receipt of the sales tax exemption letter for the Facility, the Company agrees to provide the Agency with the following information: (1) names, addresses, telephone numbers and federal employer identification numbers for all contractors and subcontractors in connection with the acquisition, construction and equipping of the Facility; and (2) estimated value of all goods and services to be exempted by reason of the Company's designation as agent for the Agency. Upon receipt of the information set forth in the previous sentence (and if, upon review of such information, the Agency determines that the Company has underpaid the Agency's administration fee relating to the Facility, upon payment of the Company of any such deficiency), the Agency will issue a sales tax exemption letter for the Facility. The Agency currently anticipates that any sales tax exemption letter issued by the Agency pursuant to this Section 4.7 will be in a form similar to the form attached hereto as Exhibit C.

(c) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the “Thirty-Day Tax Report”), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such

designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit D. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

## ARTICLE V

### DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby leases the Facility, consisting of the Land as particularly described in Exhibit A attached hereto, including the Albany Steam Station, the Improvements and the Equipment as particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 3.3, 8.3 and 10.2 hereof) and the leasehold estate created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on June 30, 2024, upon termination of the PILOT Agreement or on such earlier date as may be permitted by Section 11.1 hereof, in all cases provided that title to the Facility has been transferred and conveyed to the Company.

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company (or its assignees or sublessees) during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company (and its assignees and sublessees) in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, the Company shall pay to the Agency as additional rent, a general firm, fixed Agency fee not to exceed \$700,000 (the "Fee") for the closing of financial assistance by the Agency for the Facility. The Agency fee shall not be increased or decreased for any reason including, but not limited to an increase or decrease in the cost to construct the Facility. The Company will pay the Fee as follows:

- (i) \$75,000.00 within three weeks following the Agency's passage of the inducement resolution, which the Agency hereby acknowledges has been paid;
- (ii) \$125,000 upon approval of the Article X Application by the New York State Board on Electric Generation Siting and the Environment and the issuance of a final and unreviewable certificate;
- (iii) \$150,000 upon the occurrence of the closing of the permanent financing for the Facility among the Company, the Agency and the Lender to the Company but in any event no later than three months after receipt of the certificate following approval of the Article X Application as described in Section 5.3(b)(ii) above; and
- (iv) \$350,000 upon commencement of operations of the Facility, based on its commercial in-service date for the Facility the evidence for which shall be the discontinuance of operations at the existing Albany Steam Station.

The fees and expenses of Ronald L. Promboin and Michael Whiteman shall be included in the Fee but all other fees and expenses as set forth in Section 5.3 (c) hereof shall not be included in the Fee and the Company shall pay such fees and expenses in addition to the Fee.

The Company acknowledges that the Agency's Uniform Tax Exemption Policy provides that if the Agency, at the Company's request, issues its sales tax exemption letter to the Company prior to the closing of the Financial Assistance, one-half of the Fee (\$350,000.00) shall have been paid (amounts paid under (i) and (ii) above shall be credited toward payment of one-half of the Fee) at the time of issuance of the Agency's sales tax exemption letter and the balance of the Fee will be paid upon commencement of operations of the Facility, based on its commercial in-service date, as set forth in (iv) above.

In the event that construction of the Facility is not commenced and the Agency transfers title to the Facility to the Company, the Fee shall be refunded to the Company, less

- (i) fees and expenses incurred by the Agency as set forth in Section 5.3(c) hereof;
- (ii) the fees and expenses of Ronald L. Promboin and Michael Whiteman relating to consultation with and services to the Agency with respect to a possible payment-in-lieu-of-tax arrangement with the Company; and

- (iii) reasonable and necessary fees and expenses incurred by the Agency (and the officers, members, agents, employees, the Agency's Transaction Counsel and Agency Counsel) after transfer of the Facility from the Company to the Agency.

(c) The Company will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of granting financial assistance and executing the inducement resolution and the preliminary agreement or performing its obligations thereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Facility to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Agency's Transaction Counsel and the Agency's Counsel in connection with the preparation of any documents pertaining to the financial assistance except that the Company shall not have to pay the fees and expenses of Ronald L. Promboin and Michael Whiteman as those fees and expenses have been included in the Fee.

(d) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a), 5.3(b) or 5.3(c), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency.

Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 3.3 and 8.3 and Article X hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

Section 5.5 [Intentionally Omitted]

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loans. In the event the Loans shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof (i) all references in this Lease Agreement to the Lender, the Loan



Agreement, the Note and the Mortgage shall be ineffective and (ii) the Company (or Owner) shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the scheduled expiration of the Lease Term, on all of the terms and conditions hereof. In the event of any such payment or the making of any such provision, the Company on behalf of the Agency, at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the Mortgage and any other security interest relating to the Facility or this Lease Agreement.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

#### Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility in safe condition according to generally accepted industry standards; and (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), provided that:

(i) the Company shall (A) give, or cause to be given, all notices required by, and comply or cause compliance with, all laws, ordinances, municipal rules and regulations and requirements of all governmental agencies and public authorities legally applicable to the conduct of work on such additions, modifications or improvements to the Facility or part thereof (the applicability of such laws, ordinances, rules and regulations to be determined both as if the Agency were the owner of the Facility and as if the Company and not the Agency were the owner of the Facility), (B) defend and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith, (C) promptly procure all permits and licenses legally required and necessary for the prosecution of any work described in this Section 6.1(a) and (D) make all payments in lieu of taxes required by Section 6.8 hereof;

(ii) The Lender has consented to all structural additions, modifications or improvements to the extent required by the Loan Documents;

(iii) The additions, modifications or improvements to the Facility shall not constitute an Event of Default; and

(iv) Any such addition, modification or improvement to the Facility shall not cause the Facility to fail to qualify as a "project" under the Act.

(b) With the written consent of the Lender, which shall not be unreasonably withheld, the Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or

improvements made by the Company shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to such Property and to perfect or protect the lien of the Mortgage.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Sections 6.1 and 8.10 hereof, the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of portions of the Facility or such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall adversely affect the structural integrity of the Facility, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

### Section 6.3 Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) and all payments under the PILOT Agreements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term, subject to the terms of the PILOT Agreement.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books

adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency or the Lender.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency and the Lender official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency and the Lender evidencing payment of any tax.

Section 6.4      Insurance Required.      At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance that is reasonably commercially available against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the principal amount of the Loans.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$50,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or

damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

- (i) Workers' compensation and employer's liability with limits in accordance with applicable law.
- (ii) Comprehensive general liability providing coverage for:
  - Premises and Operations
  - Products and Completed Operations
  - Owners Protective
  - Contractors Protective
  - Contractual Liability
  - Personal Injury Liability
  - Broad Form Property Damage  
(including completed operations)
  - Explosion Hazard
  - Collapse Hazard
  - Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

- (iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

- (iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$25,000,000.

(e) The Company shall have the right to self-insure against the requirements of Section 6.4(c) required above, subject to:

- (i) "Self-insure" shall mean that the Company is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and the Company shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease Agreement.
- (ii) All amounts which the Company pays or is required to pay and all loss

or damages resulting from risks for which the Company has elected to self-insure shall be subject to the waiver of subrogation provisions of Section 6.5(a) hereof and shall not limit the Company's indemnification obligations set forth in Section 8.2 hereof.

- (iii) The Company's right to self-insure and to continue to self-insure is conditioned upon and subject to:

(a) The Company having a net worth of at least 100 Million Dollars (\$100,000,000.00). The amount of the Company's net worth requirement shall be increased by Ten Million Dollars (\$10,000,000.00) at the end of each five (5) years after the commencement of this Lease Agreement;

(b) The Company providing an audited financial statement, prepared in accordance with generally accepted accounting principles, to the Agency by May 1 of every year which establishes and confirms that the Company has the required net worth;

(c) No events occurring that make it apparent that such net worth has been diminished below the required level (such as the bankruptcy of the Company); and

(d) The Company maintaining appropriate loss reserves which are actuarially derived in accordance with accepted standards of the insurance industry ;and accrued (i.e. charged against earnings) or otherwise funded.

- (iv) In the event the Company fails to fulfill the requirements of (e)(iii), then the Company shall immediately lose the right to self-insure and shall be required to provide the insurance specified in Section 6.4(c) above.

(f) In the event that the Company elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, the Company shall:

- (i) undertake the defense of any such claim, including a defense of the Agency, at the Company's sole cost and expense, and
- (ii) use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by the Company to self-insure.

- (g) In the event that the Company elects to self insure, the Company shall

provide the Agency with certificates of self-insurance specifying the extent of self-insurance coverage hereunder and containing a waiver of subrogation provision reasonably satisfactory to the Agency. Any insurance coverage provided by the Company shall be for the benefit of the Company and the Agency.

**Section 6.5**      **Additional Provisions Respecting Insurance.**

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. The company issuing the policies required by Section 6.4(a) shall be rated “A-” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4(a) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the Lender as first mortgagee, shall provide for payment to the Company and the Lender, as their interests may appear, of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days’ prior written notice of the restriction, cancellation or modification thereof to the Agency and the Lender. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and the Lender as additional named insureds. All policies evidencing the insurance required by Sections 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional named insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to the Lender pursuant to the Mortgage and the Company consents thereto. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) Binders for the policies of insurance required by Sections 6.4(a) and 6.4(c) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the binder of insurance required by Sections 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the acquisition, construction and equipping of the Facility commences. The Company shall deliver to the Agency and the Lender before the first Business Day of each calendar year thereafter a binder dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency and the Lender may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows:

(i) the Net Proceeds of the insurance required by Sections 6.4(a) hereof shall be applied as provided in Section 7.1 hereof and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 6.7 Right of Lender to Pay Taxes, Insurance Premiums and Other Charges.** If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments-in-lieu-of-taxes pursuant to the PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency or the Lender may pay or cause to be paid such tax or payments-in-lieu-of-taxes pursuant to the PILOT Agreement, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. No such payment shall be made or act performed by the Agency or the Lender until at least ten (10) days shall have elapsed since notice shall have been given by the Lender to the Agency, with a copy of such notice being given to the Company (or by the Agency to the Company and the Lender), and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (iii) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency or the Lender shall affect or impair any rights of the Agency hereunder or of the Lender under the Mortgage arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency or the Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or the Lender pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency or the Lender at one percent (1%) in excess of the Prime Rate, and such amount, together with such interest, shall become additional indebtedness secured by the Mortgage.

(a) **Section 6.8. Payments in Lieu of Taxes.** It is recognized that under the provisions of the Act the Agency is required to pay no taxes or assessment (other than special assessments) upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. The Company therefore agrees to make such payments in lieu of taxes as are required pursuant to the PILOT Agreement at the times and in the manner called for therein.

## ARTICLE VII

## DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility; and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and
- (iii) the Company shall promptly give written notice thereof to the Agency and the Lender; and
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Lender and the Company as their interests may appear and except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender pursuant to the terms of the Loan Documents.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damage or destruction shall be subject to the following conditions:

- (i) the Facility shall continue to constitute a "project" as such term is defined in the Act; and
- (ii) any other conditions the Lender may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If an Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.



(e) If the entire amount of the Loans and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

Section 7.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("Substitute Facilities"); and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and
- (iii) the Company shall promptly give written notice thereof to the Agency and the Lender; and
- (iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Lender and applied by the Lender pursuant to the terms of the Loan Documents except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender pursuant to the terms of the Loan Documents.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions:

- (i) the Facility or the Substitute Facilities shall continue to constitute a “project” as such term is defined in the Act; and
- (ii) the Facility or the Substitute Facilities will be subject to no Liens.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein.

(d) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loans and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

**Section 7.3      Condemnation of Company-Owned Property.** The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

## ARTICLE VIII

## SPECIAL COVENANTS

Section 8.1. No Warranty of Condition or Suitability by Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees, subject to Section 8.8 hereof, that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing and equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(c) of this Lease Agreement and all causes of action and attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section)) or any of the other documents delivered on the Closing Date by the Agency and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from intentional or willful wrongdoing of the Agency or any of its directors, members, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited

only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its respective members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Right to Inspect Facility. The Agency and the Lender and the duly authorized agents of either of them shall have the right at all reasonable times on reasonable notice to inspect the Facility.

Section 8.4 Company to Maintain Its Existence; Conditions Under Which Exceptions Permitted. The Company agrees that during the Lease Term it will maintain its corporate existence, will not dissolve or otherwise dispose of all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States of America, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another such domestic corporation, all or substantially all of its assets as an entirety, provided (i) that the surviving, resulting, or transferee corporation, as the case may be, is incorporated under the laws of the State or qualifies to do business in the State, and (ii) that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Company under this Lease Agreement and any other agreement securing the Company's performance of its obligations hereunder. Further, if no Event of Default specified in Section 10.1 hereof should have occurred and be continuing, the Company may convert from a corporation to a limited liability company, provided that the resulting limited liability company meets clauses (i) and (ii) in the previous sentence and immediately after the conversion has substantially the same net worth as the Company immediately before the conversion.

Section 8.5 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law. The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company. The Company shall furnish to the Agency and to the Lender within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Company.

## Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts and authorities, having jurisdiction over the Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) In the event the Mortgage is foreclosed, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Facility so that the condition of the Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law.

(c) Except in compliance with all Environmental Laws, the Company shall keep, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to keep, the Facility free of all Hazardous Substances and, shall not cause or permit the Facility or any part thereof to be used for the storage, treatment, generation, manufacture, refinement, transportation, processing, handling, production, processing or disposal of any Hazardous Substances.

(d) The Company shall comply with, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to comply with, all applicable Environmental Laws, and all orders, decrees, or directives by federal, state, or local courts or government agencies relating thereto, and shall obtain and comply with, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with all applicable Environmental Permits.

(e) The Company shall not cause or permit any change to be made in the present or intended use of the Facility which would (i) involve use of the Facility as a landfill, (ii) violate any applicable Environmental Law, (iii) constitute non-compliance with any Environmental Permit.

(f) The Company shall promptly provide the Agency with a copy of any and all notifications it receives of any violation of any Environmental Law at the Facility and which it gives or receives with respect to any past or present Release or the threat of a Release on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility, and, in any event, will immediately notify the Agency of any such Release or threat of a Release once the Company has knowledge of such Release or threat of a Release.

(g) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal and other remedial actions necessary to contain, remove and clean up all Hazardous Substances that the Company Releases at the Facility in accordance with all applicable Environmental Laws and all Environmental Permits.

(h) The Company shall at all times allow the Agency and its officers, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility for inspection of relevant books and records, for any items related to compliance with Environmental Laws and Environmental Permits, environmental reporting, record keeping, notices or violations. The Agency may inspect the Facility's relevant books and records as required, in the reasonable professional judgment of the Agency's engineer or legal counsel following consultation with the Company, in order to determine whether (i) a Release has occurred or (ii) the Company or any other party in possession of the Facility are in continuing compliance with all Environmental Laws and Environmental Permits.

(i) The Company hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend and save harmless each and every Indemnitee from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation attorneys', consultants' and experts' fees, expenses and disbursements) of any kind or nature whatsoever by whomever asserted which may at any time be imposed upon, incurred by or asserted or awarded against any Indemnitee relating to, resulting from or arising out of the past, present or future (i) use of the Facility by the Company for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes, (ii) the Release or threat of a Release of Hazardous Substances at the Facility by the Company, (iii) human exposure to

any Hazardous Substance or nuisances of whatever kind to the extent the same arises from the Company's ownership, use, operation, sale, transfer or conveyance of the Facility, (iv) the Company's violation of any applicable Environmental Law, (v) the Company's non-compliance with any Environmental Permit or (vi) material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement (collectively, the "Indemnified Matters").

(i) The liability of the Company to each Indemnitee hereunder shall in no way be limited, abridged, impaired or otherwise affected by (a) any extensions of time for payment or performance required by the Lease Agreement, (b) any investigation or inquiry conducted by or on the behalf of the Agency or any other Indemnitee or any information which the Agency or any other Indemnitee may have or obtain with respect to the environmental or ecological condition of the Facility (c) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding..

(ii) The indemnification agreement contained herein is wholly independent of and in addition to any indemnification agreement heretofore given to the Agency or any other Indemnitee as part of the Lease Agreement.

(j) Notwithstanding the provisions of this Section 8.8, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in this Section by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company is not required to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the lien of the Mortgage as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

(k) Notwithstanding any provisions of this Section 8.8, the Agency retains the right to defend itself in any action or actions that are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Agency shall select its own counsel, and the Company shall pay any and all reasonable costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

Section 8.9 Liens and Encumbrances. The Company, throughout the Lease Term, shall be allowed to create or suffer to be permitted or created any Lien upon the Facility or any part thereof.

Section 8.10 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency and the Lender. All Equipment and other Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of construction of the Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Equipment and other Property were properly identified by such appropriate records as were approved by the Agency and the Lender.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be treated as the owner of the Facility for federal income tax and State franchise tax purposes and shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 8.12 Employment Opportunities. Notice of Jobs. The Company acknowledges receipt of notice of Section 858-b of the Act, regarding the listing of jobs and consideration of certain persons for new employment opportunities. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division (the "Referral Agency"). The Company also agrees, where practicable, that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agency.

Section 8.13 Rights to Products and Services. The parties also agree that the Company retains all rights to any and all products and services from the Facility.

## ARTICLE IX

### RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

Section 9.1 Restriction on Sale of Facility; Release of Certain Land or Other Portion of Facility.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, mortgage or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease Agreement, without the prior written consent of the Company and the Lender.

(b) With the prior written consent of the Lender (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the Lender may deem appropriate), the Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land or any other portion of the Facility which is not necessary, desirable or useful for the Facility in the Company's sole judgment. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver, and request the Lender to execute and deliver, any and all instruments necessary or appropriate to so release such part of, or interest in, the Land or any other portion of the Facility and convey such title thereto or interest therein, free from the lien of the Mortgage, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Lender shall be provided with a copy of the instrument transferring such title or interest in such Land or any other portion of the Facility, an instrument survey (if the Lender or Agency so requests) of the Land or any other portion of the Facility to be conveyed, together with a certificate of an Authorized Officer of the Company stating that there is then no Event of Default under this Lease Agreement and such part of, or interest in the Land or such other portion of the Facility is not necessary, desirable or useful for the Facility.

(c) No conveyance of any part of, or interest in the Land or such other portion of the Facility effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement. No sale or other disposition of the Facility or any portion thereof shall relieve the Company from primary liability for any of its obligations hereunder other than as set forth in Section 9.3 hereof.

## Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, without the consent of the Agency, but with the prior written consent of the Lender (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the Lender may deem appropriate), may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage or any other Lien created by the Loan Documents, provided that such removal will not change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of



Equipment. The Company shall pay any costs (including counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement.

### Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may be assigned by the Company, in whole or in part, and the Facility may be subleased, or the Company's rights in the Facility may be assigned, in whole or in part without the consent of the Agency. The Company shall provide written notice of any assignment or sublease to the Agency prior to the effective date of such assignment or sublease. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) No sublease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) No assignment shall relieve the Company from secondary liability for any of its obligations hereunder in the event that the assignee shall default in its obligations hereunder or under the PILOT Agreement following a material breach which remains uncured for the requisite period and following the exercise by the Agency of its remedies hereunder and pursuant to the PILOT Agreement;

(iii) Any assignee shall assume the obligations of the Company under the Agency Documents to the extent of the Company's interest thereon;

(iv) The Company shall, within ten (10) Business Days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of each such assignment or sublease, as the case may be, and, with respect to an assignment, the instrument of assumption;

(v) The proposed assignee's or subtenant's use of the Facility shall constitute a "project" under the Act; and

(vi) No Event of Default that remains uncured exists under this Lease Agreement or any of the Company Documents.

(b) In addition, the Agency acknowledges that the Company may assign or sublease its interest in the Facility to the Owner. In the case of a sublease, the Owner and the Company would then enter into the Sublease Agreement. The Agency hereby agrees to such assignment or sublease and covenants to execute such agreements, certificates and other documents in order to effectuate such assignment or sublease, the Sublease Agreement and the financing of the Facility.

Section 9.4 Mortgage and Pledge of Agency's Interests to Lender. It is anticipated that the Agency shall (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement and in all amounts payable by the Company (or Owner) pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights), to the Lender (and, if applicable, the Owner) as security for the payment of the principal of and interest on the Loans and the other amounts payable to the Lender and the Owner. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall be subsequent to such mortgage, pledge and assignment continue to run to the Agency for its benefit as well as for the benefit of the Lender and, if applicable, the Owner.

Section 9.5 Pledge of Company's Interest to Lender. It is anticipated that the Company (or Owner) shall mortgage, pledge and assign its rights to and interest in this Lease Agreement to the Lender as security for the payment of the principal of and interest on the Loans and other amounts due to the Lender and the Owner. The Agency hereby acknowledges and consents to such mortgage, pledge and assignment by the Company (or Owner).

Section 9.6 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and the Lender and shall furnish to the Company and the Lender, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.6(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company or the Lender may reasonably request.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement:

- (i) the failure by the Company to pay or cause to be paid on the date due, the amount specified to be paid pursuant to Section 5.3(a) and (b)

hereof and continuance of said failure for a period of thirty (30) days after written notice to the Company stating that such payment is due and payable. Any such notice shall identify, with reasonable detail, the amount of the payment which is due, the payee, the due date, and the basis or requirement for such payment.

- (ii) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed and continuance of such failure for a period of thirty (30) days after written notice to the Company requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the default within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default. Any such notice shall describe, in reasonable detail, the nature of the default and the basis or requirement for action or performance by the Company for which the Agency has determined the Company to be in default.
- (iii) the failure by the Company to pay or cause to be paid on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement such as to constitute a default thereunder.
- (iv) the invalidity, illegality or unenforceability of the PILOT Agreement; or the failure by the Company to observe and perform any material covenant contained in the PILOT Agreement such as to constitute a default thereunder.
- (v) any representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading in any material respect.
- (vi) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains

undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Lender, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

## Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Agency or the Lender may take, to the extent permitted by law (and, in the case of the Lender, the Loan Documents), any one or more of the following remedial steps:

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the PILOT Agreement and (C) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vi) hereof shall have occurred, such installments of rent and other payments due under this Lease Agreement and other Agency Documents shall become

immediately due and payable without notice to the Company or the taking of any other action by the Agency or the Lender;

- (ii) terminate this Lease Agreement and reconvey the Facility to the Company. The Agency shall have the right to execute an appropriate deed with respect to the Facility and to place the same on record in the Albany County Clerk's Office, at the expense of the Company and in such event the Company waives delivery and acceptance of such deed and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed;
- (iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the PILOT Agreement and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement and under the PILOT Agreement; provided, however, that the Agency shall not be entitled to sell the Facility.

**Section 10.3 Remedies Cumulative.** No remedy herein conferred upon or reserved to the Agency or the Lender (subject to Section 12.11 hereof) is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity; provided, however, that the Company (or its designee) may effectuate an early termination pursuant to Article XI of this Agreement in response to the occurrence of an Event of Default and remedy election by the Agency as long as the Company complies with all the conditions to early termination set forth in Article XI hereof. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency or the Lender, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement (or in the PILOT Agreement, as may be applicable).

**Section 10.4 Agreement to Pay Attorneys' Fees and Expenses.**

(a) In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

(b) In the event the Company should default under any of the provisions of this Lease Agreement and the Lender should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Lender the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI

## EARLY TERMINATION OF LEASE AGREEMENT; OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. Upon sixty days prior notice to the Agency, the Company shall have the option to terminate this Lease Agreement at any time upon filing with the Agency and the Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make the following payments:

(a) To the Agency or the Taxing Entities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 11.3 hereof.

(b) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.

**Section 11.3      Obligation to Purchase Facility.** Upon termination or expiration of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Facility from the Agency for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to the PILOT Agreement through the date upon which this Lease Agreement terminates or expires. The Company shall purchase the Facility by giving written notice to the Agency and to the Lender (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to purchase and (ii) fixing the date of closing such purchase, which shall be the date on which this Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the purchase price, deliver and request the Lender to deliver to the Company all necessary documents (i) to convey to the Company title to the Property being purchased, as such Property exists, subject only to the following: (A) any Liens to which title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, and (C) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of

Default hereunder, and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights).

## ARTICLE XII

## MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chairman

With a copy to:

McNamee, Lochner, Titus & Williams, P.C.  
75 State Street  
P.O. Box 459  
Albany, New York 12201-0459  
Attention: Thomas P. Connolly, Esq.

To the Company:

PSEG Power New York Inc.  
80 Park Plaza  
Newark, New Jersey 07102  
Attention: Legal Department

and

PSEG Power New York Inc.  
80 Park Plaza, Mail Code T6B  
Newark, New Jersey 07102  
Attention: Manager – Corporate Properties

and

PSEG Power New York Inc.  
c/o Albany Steam Station  
Rt. 144  
Glenmont, New York 12077



Attention: Plant Manager

With a copy to:

Nixon Peabody LLP  
Clinton Square  
P.O. Box 31051  
Rochester, New York 14603  
Attention: John B. Hood

Section 12.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the Lender.

Section 12.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 Further Assurances. The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Lease Agreement and the Mortgage and the subordination contemplated by Section 3.3 hereof. The Agency agrees to amend any of the Agency Documents as the Owner or Lender may reasonably request.

Section 12.8 Survival of Obligations. This Lease Agreement shall survive the making of the Loans and the performance of the obligations of the Company to make payments required by Section 5.3 and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement and the payment of the Loans.

Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 12.10 No Recourse; Special Obligation.

(a) All covenants, stipulations, promises, agreements and obligations (collectively, the "Obligations") of the Agency contained in this Lease Agreement and in the other Agency Documents shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "Employee of the Agency") in this individual capacity, and no recourse under or upon any Obligation in the Agency Documents contained or otherwise based upon or in respect of this Lease Agreement or the other Agency Documents, or for any claim based thereon or otherwise in respect hereof or thereof, shall be had against any past, present or future Employee of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person so executing any of the Agency Documents on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person executing any of the Agency Documents, it being expressly understood that Agency Documents issued thereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing the Agency Documents or under or by reason of the Obligations, contained in the Agency Documents or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the creation of the indebtedness thereby authorized by the Agency Documents, or under or by reason of the Obligations contained in any of the Agency Documents or implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Agency Documents.

(b) The Obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York, or the Town of Bethlehem, New York and neither the State of New York nor the Town of Bethlehem, New York shall be liable thereon, and further such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease or other disposition of the Facility.

(c) Notwithstanding any provision of this Lease Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provisions hereof unless, (i) the Agency shall have been requested to do so in writing by the Company, and (ii) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent, servant or employee of the Agency) of any liability, reasonable fees, expenses or other costs, the Agency shall have received from the party making such request security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such reasonable fees, expenses and other costs.


Section 12.11 References to Lender; Loan Documents Control. Because it is anticipated that the Company or the Owner, as the case may be, will finance the cost of the Facility after the Closing Date, there are references to the term "Lender" throughout this Agreement. This Agreement is not intended to create any rights or obligations on the part of the Lender that are also not provided or imposed under the Loan Documents and to the extent

there are inconsistencies between this Agreement and the Loan Documents regarding such rights and obligations, such provisions in this Agreement shall be interpreted in accordance with the Loan Documents and the Loan Documents will control.


CW@green@csglaw.com.com  
Project Fossil/16:02:2021 19:02

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the day and year first above written.

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: F. Michael Tucker  
Title: Chairman

## PSEG POWER NEW YORK INC.

By:   
Name: Jeffrey W. Moore  
Title: Vice President



[illegible]

On the 5 day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey W. Moore, 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 Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Mary Patricia Corcoran  
Notary Public

**MARY PATRICIA CORCORAN**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 6/6/2006**

EXHIBIT A

## Legal Description of Real Property

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem,  
County of Albany and State of New York, being further described as follows:

Beginning at a point at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara Mohawk Power Corporation (“Niagara”) by deed recorded in the Albany County Clerk’s Office in Book 1228 of Deeds, Page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following seven (7) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08°37’25” W a distance of 212.38 feet to a point; (2) N 02°34’59” W a distance of 292.44 feet to a point; (3) N 03°04’27” E a distance of 800.80 feet to a point; (4) N 07°22’16” E a distance of 831.38 feet to a point; (5) N 13°31’57” W a distance of 30.80 feet to a found concrete monument; (6) N 11°17’47” W a distance of 229.80 feet to a found concrete monument; (7) N 28°40’11” W a distance of 8.60 feet to a point therein where the same is intersected by the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following four (4) courses along said dividing line; (1) N 66°48’12” E through a metal rod and cap set at a distance of 2.45 feet from the east line of New York State Highway #193, Route #144 (River Road) a total distance of 213.71 feet to a rod and cap set; (2) S 77°11’59” E a distance of 89.66 feet to a metal rod and cap set; (3) N 67°55’30” E a distance of 646.83 feet to a metal rod and cap set; (4) N 63°05’59” E passing through a metal rod and cap set at 217.64 feet a total distance of 264.94 feet to a point on the westerly line of the “BEACON ISLAND DIKE” as shown on a plan entitled “Albany Steam Station Lands Under Water at Island Creek” prepared by Niagara and having a drawing number of G-3539-E; thence S 08°57’11” E along said westerly line a distance of 86.36 feet to a point; thence N 78°22’58” E a distance of 122.49 feet to a point on the U.S. Pier Head line as established by the U.S. Army Corps of Engineers May 10, 1934 and being further described as being point number 218A as shown on the said plan entitled “Albany Steam Station Lands Under Water at Island Creek”; thence S 11°37’12” E along said Pier Head line a distance of 2085.82 feet to a point in the southeasterly corner of lands conveyed to Niagara as described in Book 1228 of Deeds, Page 195 being a corner in the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following five (5) courses along said dividing line: (1) S 67°30’33” W a distance of 130.00 feet to a metal rod and cap set; (2) S 07°29’12” E a distance of 279.62 feet to a point; (3) S 75°58’09” W a distance of 827.00 feet to a metal rod and cap set; (4) N 26°11’21” W a distance of 148.73 feet to a found concrete monument; (5) S 67°30’33” W a distance of 833.05 feet to the point of beginning (the “Premises”), comprising of an area of 83.50 acres as shown on a Survey of James M. Zuccolotto, N.Y.S.P.L.S., dated November 16, 1999, last revised March 13, 2000, consisting of four (4) sheets, and filed in the Albany County Clerk’s Office in Map Drawer 172 as Map No. 10859 on March 20, 2000 (the “Survey”).

Bearings and coordinates refer to the N.Y. State Plane Coordinate System (Eastern Zone - NAD '83) based on control established by G.P.S. and adjusted to the published coordinates for N.G.S. horizontal control stations "Rensport", "Schodack" and "New Scot". Distances are grid distances.

BEING the same premises or a portion thereof described in the following instruments: deed from New York State Realty Terminal Company to Niagara recorded in the Albany County Clerk's Office in Book 1265 of Deeds at page 75; deed from Hudson River Estates, Inc. and the Delaware and Hudson Railroad Corporation to Niagara recorded in the Albany County Clerk's Office in Book 1307 of Deeds at page 479; Letters Patent issued June 10, 1953 to Niagara recorded in the Albany County Clerk's Office in Book 1376 of Deeds at page 75; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1420 of Deeds at page 367; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1491 of Deeds at page 139; and deed from Sun Oil Company to Niagara recorded in the Albany County Clerk's Office in Book 1228 of Deeds at page 195.

TOGETHER WITH an easement to build, maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a water main and related equipment over lands now or formerly owned by Niagara, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point, said point being the intersection of the northerly line of the Premises with the center line of an existing eight inch water main, said point being further described as being 13.5 feet± easterly and 110 feet ± southerly of center line station 71+43.58 of the former Delaware and Hudson Railroad Susquehanna Division spur to Cabbage Island, Railroad Valuation map V4-142-B; thence northerly parallel to and 10 feet distant easterly of the center line alignment of the said Delaware and Hudson Railroad line a distance of 2700 feet ± to a point; thence westerly crossing said center line a distance of 27 feet ± to a point; thence northerly parallel to and approximately 13.5 feet westerly of the center line of the former Delaware and Hudson Railroad line a distance of 2-15± feet to a point; thence northeasterly, northerly and northwesterly crossing the Island Creek Diversion Channel (Normans Kill) on the west side of a railroad bridge a distance of 355 feet ± to a point; thence northwesterly a distance of 300 feet ± to a point on the northerly line of lands now or formerly owned by Niagara, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH all right, title and interest of Grantor under a grant made by Hudson River Estates, Inc. to Niagara dated October 21, 1963 recorded in the Albany County Clerk's Office on January 17, 1964 in Book 1782 of Deeds at Page 245, a grant made by Albany Port District Commission to Niagara dated June 30, 1952 recorded in the Albany County Clerk's Office on July 10, 1952 in Book 1318 of Deeds at Page 385, as amended by an Amendment to 1952 Indenture of the Albany Port District Commission, dated May 11,



2000, recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 945 and under a letter agreement, dated June 12, 1952 between The Delaware and Hudson Railroad Corporation and Niagara, subject to any burdens set forth in the above-referenced grants or the above-referenced letter agreement.

TOGETHER WITH an easement to maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a forced main sanitary sewer line over lands now or formerly owned by Niagara and Consolidated Rail Corporation, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point at the intersection of the westerly line of New York State Highway #193, Route #144 (River Road) with the centerline of the existing 4" force main sanitary sewer, said point being approximately 175 feet south of New York State Survey Station 272+50, said survey station shown on drawings by the New York State Department of Transportation No. RC 45-28 River Road S.H. #193; thence northwesterly a distance of 424 feet± to a point; thence continuing northwesterly on a line deflecting to the right at an angle of 25° 42' a distance of 700 feet± to a point; thence continuing northwesterly on a line deflecting to the left at an angle of 42° 15' a distance of 508 feet± to a point; thence westerly on a line deflecting to the left at an angle of 45° a distance of 323 feet± to a point; thence northwesterly on a line deflecting to the right at an angle of 45° a distance of 67 feet ± to a point on the southerly line of the Feura-Bush-Glenmont Road, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT to the terms of a Grant of Easement for a sewer main between Consolidated Rail Corporation and Niagara dated December 17, 1992 and recorded in the Albany County Clerk's Office on December 30, 1993 in Book 2500 of Deeds at Page 391, as shown on a map annexed to the foregoing Grant of Easement identified as "Map NMP - 137 Albany Steam Station Detail of 4" Force Main Sanitary Sewer Crossing at Penn Central Railroad" at Book 2500 of Deeds at Page 630 and as shown on Sheet 4 of the Survey.

TOGETHER WITH an easement to install, maintain, repair, modify, enlarge, inspect, remove, patrol and replace a water service line to tap into the sixteen (16) inch water main described in an Indenture, made the 29th day of January, 1979 by and between Niagara and the Town of Bethlehem and recorded in the Albany County Clerk's Office on February 14, 2000 in Book 2650 of Deeds at page 108 over lands now or formerly owned by Niagara, 15 feet in width 7.5 feet on each side of the following described centerline:

Commencing at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, page 195, said point also being the east line of Route #144 (River Road), New York State Highway

#193; thence the following three (3) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08° 37' 25" W a distance of 212.38 feet to a point; (2) N 2° 34' 59" W a distance of 292.44 feet to a point; (3) N 03° 04' 27" E a distance of 603.93 feet to a point; thence S 87° 31' E, crossing Route #144 (River Road) New York State Highway #193, a distance of approximately 67.5 feet to a point on the west line of said highway to the point and place of beginning of said centerline; thence S 87° 31' E through the lands now or formerly owned by Niagara approximately 20 feet to the existing Town of Bethlehem waterline and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT TO the terms of an easement granted to Niagara dated June 15, 1953 and recorded in the Albany County Clerk's Office on July 13, 1953 in Book 1365 of Deeds at Page 225, as shown on Sheets 2 and 3 of the Survey.

TOGETHER WITH the appurtenances, including riparian rights, if any, and all the estate and rights of Grantor in and to the Premises and together with all right, title and interest of Grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the Premises.

SUBJECT TO all other easements, covenants, restrictions and other encumbrances of record.

SUBJECT TO terms, covenants, conditions and provisions of the Letters Patent granted by the People of the State of New York recorded in the Albany County Clerk's Office in Liber 837 of Deeds at page 226, Liber 850 of Deeds at page 432 and Liber 1376 of Deeds at Page 75 to the extent they affect the Premises.

SUBJECT TO any and all right, title and interest the public may have in and to the public highways running through or adjacent to the Premises.

Being and intending to describe the same premises described in a deed from Niagara to Grantor dated May 11, 2000 recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 935.

TOGETHER WITH THE BENEFITS of a Sound Easement Agreement between Niagara and Grantor dated as of May 11, 2000 and recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 889.

TOGETHER WITH AND SUBJECT TO the terms of an Easement Agreement between Grantor and Niagara dated May 11, 2000 recorded in the Albany County Clerk's Office in Book 2655 of Deeds Page 897.

TOGETHER WITH AND SUBJECT TO the terms of a Site Agreement between Grantor and Niagara dated as of February 1, 2000.

EXHIBIT B

Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the completion of the PSEG Power New York Inc. Facility located in the Town of Bethlehem, Albany County, New York.

CW@ggreen@csglaw.com  
Project Fossil/16:02:2021 19:02

EXHIBIT C

## Form of Sales Tax Exemption Letter

February 5, 2002

Re: New York State Sales and Use Tax Exemption  
Town of Bethlehem Industrial Development Agency

To Whom It May Concern:

Pursuant to TSB-M-87(7)S issued by the New York State Department of Taxation and Finance, you have requested a letter from the Town of Bethlehem Industrial Development Agency (the "Agency") containing the information required by said policy statement regarding the sales tax exemption with respect to supplies, materials, services, fixtures and equipment to be used in connection with the acquisition, construction and installation of the following described project: (A) (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem (collectively the "Land"); (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the "Improvements"); and (3) the acquisition by the Agency and the installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the "Equipment") (the Land, the Improvements and the Equipment are hereinafter collectively referred to as the "Facility"); and (B) to lease (with or without an option to purchase) or sell the Facility to PSEG New York Inc. (the "Company").

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility, and the following activities as they relate to the construction and equipping of any portion of the Facility, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping; (ii) all purchases, rentals, uses of consumption of supplies, materials and services of every kind and description used in connection with construction and equipping; and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs), installed or placed in, upon or under the Facility prior to the Completion

Date. No operating expenses of the Facility, and no other purchases or property shall be subject to an exemption of New York State sales or use tax.

This agency appointment includes the power to delegate such agency appointment, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company that are directly involved with the acquisition, construction and installation of the Facility, and to such other parties as the Company may choose, provided that they are directly engaged in the activities that directly relate to the Facility.

In exercising this agency appointment, the Company, its agents, subagents, contractors and subcontractors, should give the supplier or vendor a copy of this letter to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The supplier or vendor should identify the Project on each bill or invoice and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agents for the Town of Bethlehem Industrial Development Agency in making the purchase.

THIS LETTER SHALL BE IN EFFECT FROM THE DATE HEREOF UNTIL THE COMPLETION DATE FOR THE FACILITY (AS DEFINED IN THE LEASE AGREEMENT).

In the event you have any questions with respect to the above, please do not hesitate to call me.

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
F. Michael Tucker, Chairman



**IDA Appointment of Project Operator or Agent  
For Sales Tax Purposes****ST-60**  
(10/99)

The IDA must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ( )	
City	State	ZIP code	
Name of IDA project operator or agent	Check box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street Address	Telephone number ( )	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City	State	ZIP code	
Name of project		Purpose of project (see instructions)	
Street address of project site			
City	State	ZIP code	
Description of goods and services intended to be exempted from sales and use taxes			
Date project operator or agent appointed mm dd yyyy		Date project operator or agent status ends mm dd yyyy	
Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:			
Print name of officer or employee signing on behalf of the IDA		Print title	
Signature	Date	Telephone number ( )	

**Instructions****Filing Requirements**

An industrial development agency or authority (IDA) must file this form within 30 days of the date the IDA designates a project operator or appoints a person as agent of the IDA, for purposes of extending a sales and compensating use tax exemption.

The IDA must file a separate form for each project operator or agent appointed, whether directly or indirectly, and regardless of whether it is the primary operator or agent. If the IDA authorizes an operator or agent to appoint other agents, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the new agent's appointment. The IDA need not file this form for people hired to work on an IDA project who are not appointed as agents of the IDA. The IDA need not file this form if there are no sales or use tax exemption benefits authorized for a project as a result of the project's designation as an IDA project.

**Purpose of project**

For Purpose of project, enter one of the following:

- |   |                   |
|---|-------------------|
| - Services  | - Construction    |
| - Agriculture, forestry, fishing                                  | - Wholesale trade |
| - Finance, insurance, real estate                                 | - Retail trade    |
| - Transportation, communication, electric, gas, sanitary services | - Manufacturing   |
|   | - Other (specify) |

**Mailing instructions**

Mail completed form to: NYS TAX DEPARTMENT, IDA UNIT, BUILDING 8 ROOM 658, W A HARRIMAN CAMPUS, ALBANY NY 12227

**Privacy notification**

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 8, 28, and 28-A of the Tax Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer sales and use taxes or liabilities under the Tax Law, and for any other purpose authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

**Need help?**

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday.

Tax information: 1 800 972-1233

Forms and publications: 1 800 462-8100

From outside the U.S. and outside Canada: (518) 485-6800

Fax-on-demand forms: 1 800 748-3676

Internet access: <http://www.tax.state.ny.us>

Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110 (8:30 a.m. to 4:25 p.m., eastern time)



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.



If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, Taxpayer Correspondence, W A Harriman Campus, Albany NY 12227.

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 582 of the Laws of 1973 of the State, as amended.

“Agency” means (i) the Town of Bethlehem Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Counsel” means the law firm of McNamee, Lochner, Titus & Williams, P.C.

“Agency Documents” means the Lease Agreement, the PILOT Agreement, the Mortgage and the Pledge and Assignment.

“Approving Resolution” means the resolution adopted by the Agency on the 31st day of October, 2001 authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Article X Application” means the application by the Company, as assignee of NMPC, to the New York State Board on Electric Generating Siting and the Environment for a Certificate to Construct the Facility pursuant to Article X of the Public Service Law.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chair, the Secretary or the Assistant Secretary of the Agency; in the case of the Company, its President, the Treasurer and any Vice President, and, in the case of both, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Lender and to the Agency or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, the Vice Chair, the Secretary or the Assistant Secretary of the Agency, or (ii) the Company by the President, the Treasurer or any Vice President of the Company.

“Bill of Sale” means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Equipment, as the same may be amended from time to time.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York or any city in which the principal office of the Lender is located are authorized by law or executive order to remain closed.

“Closing Date” means the date of delivery of the Deed.



"Company" means PSEG Power New York Inc., a corporation duly organized and validly existing under the laws of the State of Delaware and authorized to do business in New York State, and its successors and assigns.

"Company Documents" means the Bill of Sale, the Deed, the Lease Agreement, the PILOT Agreement, and the Loan Documents, if any.

"Completion Date" means the date of completion of the Facility as certified pursuant to Section 4.3 of the Lease Agreement.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

"Construction Period" means the period (a) beginning on the earlier of (i) the date of commencement of acquisition, construction and equipping of the Facility, which date shall not be prior to April 26, 2001, or (ii) the Closing Date, and (b) ending on the Completion Date.

"Deed" means the Bargain and Sale Deed, dated the Closing Date, given by the Company to the Agency with respect to the Land and the existing improvements thereon.

"Environment" means any natural water body, any land including land surface or subsurface, air, fish, wildlife, biota and all other natural resources.

"Environmental Laws" mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes, and the common law, relating to pollution and/or the protection of the Environment and/or the health and safety of any persons and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Environmental Permits" mean all permits, licenses, approvals, authorizations, consents or registrations required by an applicable Environmental Law in connection with the ownership, use and/or operation of the Facility, or for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances at the Facility, or the sale, transfer or conveyance of the Facility.

"Equipment" means all machinery, equipment and other personal property used and to be used, both existing and to be acquired, in connection with the Facility, as described in Exhibit B to the Lease Agreement.

"Event of Default" (a) when used with respect to the Lease Agreement, means any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to the Mortgage, means any of the events defined as Events of Default in the Mortgage.

"Facility" means the Land, the Improvements and the Equipment leased to the Company under the Lease Agreement.

"Facility Services" means all services necessary for the acquisition, construction and equipping of the Facility.

"Hazardous Substance" means, without limitation, any flammables, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products or by-products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law and in the regulations promulgated thereunder. The term "Hazardous Substance" does not include products which are packaged for, stored, and used with reasonable care in accordance with labeling and instructions and for their intended use.

"Improvements" means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land and (ii) not part of the Equipment, all as they may exist from time to time.

"Indemnatee" means the Agency, its officers, directors, employees, agents, representatives, contractors and subcontractors, and the successors and assigns of all the foregoing.

"Independent Counsel" means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company or the Lender.

"Land" means the real property leased by the Agency to the Company pursuant to the Lease Agreement and more particularly described in Exhibit A attached thereto, including the Albany Steam Station.

"Lease Agreement" means the Lease Agreement, dated February 5, 2002, between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

"Lease Term" means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Lease Agreement.

"Lender" shall mean the third party lenders, if any, which make the Loans to finance or refinance the construction or other improvements of the Facility or to finance or refinance the acquisition of the Facility by the Owner.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not

limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Loans" means collectively the loans, if any, anticipated to be given by the Lender to the Owner or the Company, as the case may be, pursuant to the terms of the Loan Documents.

"Loan Agreements" means the Loan Agreements, if any, between the Owner or the Company, as the case may be, and the Lender.

"Loan Documents", if any, means, collectively, the Mortgage, the Loan Agreements, the Pledge and Assignment, the Notes and any other documents executed and delivered to the Lender in connection with the Loans.

"Mortgage" means the Mortgage and Security Agreement, if any, covering, among other things, the Facility and anticipated to be given by the Agency, the Company and, if applicable, the Owner to the security agent or trustee for the benefit of the Lender and/or the Owner as security for amounts owing to such parties, as the same may be modified, amended, renewed or extended from time to time.

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"NMPC" means Niagara Mohawk Power Corporation, a corporation duly organized and validly existing under the laws of the State of New York, and authorized to do business in New York State, and its successors and assigns.

"Notes" means the Promissory Notes, if any, anticipated to be given by the Owner or the Company, as the case may be, to the Lender evidencing the Loans for the Facility.

"Owner" means the assignee, if any, of the Company to which the Company may assign or sublease its interest in the Facility at such time as the financing of the Facility takes place.

"Parties" means the Agency and the Company.

"Person" or "Persons" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"PILOT Agreement" means the Payment-in-Lieu-of-Tax Agreement, dated February 5, 2002, between the Company and the Agency, as amended from time to time.

"Plans and Specifications" means the plans and specifications for the Improvements as set forth in the Article X Application, and as may be revised in accordance with the Lease Agreement but subject to any required approval by the New York State Board on Electric Siting and the Environment in conjunction with its issuance of the certificate of approval.

"Pledge and Assignment" means the Pledge and Assignment, if any, from the Owner or the Company, as the case may be, and the Agency to the security agent or trustee for the benefit of the Lender and/or the Owner as security for amounts owing to such parties.

"Prime Rate" means the rate stated in the Wall Street Journal from time to time as the "prime rate."

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Public Purposes" shall mean the State's objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substances into the Environment.

"Schedule of Definitions" means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

"SEQR Act" means the State Environmental Quality Review Act and the regulations thereunder.

"State" means the State of New York.

"Sublease Agreement" means the sublease agreement, if any, anticipated to be entered into between the Owner and the Company with respect to the Facility.

"Substitute Facilities" means facilities of substantially the same nature as the proposed Facility.

“Transaction Documents” means the Agency Documents, the Company Documents, and the Loan Documents, if any.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 10.2(a)(i)(B) and 10.2(a)(iii) (in each case with respect to Section 10.2 upon a continuing default in payment by the Company under the PILOT Agreement), 10.4, 11.2(b) and 12.8 of the Lease Agreement.

TOWN OF BETHEM INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BETHEM, NEW YORK)

AND

PSEG POWER NEW YORK INC.

AGREEMENT FOR PAYMENT

IN LIEU OF TAXES

DATED FEBRUARY 5, 2002

TOWN OF BETHEM INDUSTRIAL DEVELOPMENT AGENCY  
(PSEG POWER NEW YORK INC. 2002 FACILITY)

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WITNESSETH:

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities, to issue its bonds, for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such





combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the "BEC Facility"); and (3) the acquisition by the Agency and the installation at and on the Land and at the Albany Steam Station and the BEC Facility of a variety of equipment, machinery, and other personal property (the "Equipment") (the Albany Steam Station, the Land, the BEC Facility and the Equipment are hereinafter collectively referred to as the "Facility"); and

WHEREAS, the Company has requested that the Agency provide the following financial assistance:

- (A) The Agency will take title to the Facility and lease the Facility back to the Company as a straight-lease transaction as defined in Section 854(15) of the New York State General Municipal Law;
- (B) The Agency will grant an exemption from state and local sales and use taxes with respect to the qualifying personal property portion of the Facility;
- (C) The Agency will grant an exemption from mortgage recording tax, and
- (D) The Agency will grant an exemption from general real property taxation with respect to the Facility, and the Company will pay certain contractual payments in lieu of taxes, as agreed to by the Company and the Agency, for the benefit of affected tax jurisdictions (such contemplated financial assistance as set forth in A,

B, C, and D herein being collectively hereinafter referred to as the "Financial Assistance").

WHEREAS, the Agency has agreed to provide Financial Assistance to the Company for the purpose of undertaking the improvement of the Facility; and

WHEREAS, on the date ("Closing Date") the Company executed and delivered a deed and bill of sale conveying title to the Facility to the Agency ("Company Transfer"), the Agency, as landlord, and the Company, as tenant, entered into a certain lease agreement (the "Lease Agreement"), pursuant to which the Company has agreed, among other things, to construct and install the BEC Facility and Equipment on behalf of the Agency, and to lease the Facility from the Agency on the terms and conditions set forth therein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

1. Representations and Covenants.

(a) By the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(i) The Company is a business corporation duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware and is authorized to do business in New York State and has full legal right, power

and authority to execute, deliver and perform this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of this Agreement, will (A) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Company's Certificate of Incorporation or By-laws, as amended, or any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien (as defined in Paragraph 22 hereof) of any nature upon any of the Property (as defined in Paragraph 22 hereof) of the Company under the terms of any such law, ordinance, Certificate of Incorporation or By-laws, as amended, restriction, agreement or instrument, (B) require consent (which has not been heretofore received) under any corporate restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (C) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company, other than the approval of the Article X Application (as defined in Paragraph 22 hereof) and any other governmental or judicial approvals not required as of the Closing Date, including but not limited to any approval from the

Federal Energy Regulatory Commission in connection with the construction and operation of the Facility. The Facility and the design, acquisition, construction and equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency for expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subparagraph.

(iii) This Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(iv) As of the Closing Date, no litigation at law or in equity or proceeding before any federal, State or local governmental agency involving the Company is pending or, to the best of its knowledge, after due inquiry, threatened, in which any judgment or order would have a material adverse effect upon the business or assets of the Company or that would affect the Company's existence or authority to do business, the development, acquisition, rehabilitation, or operation of the Facility or the performance of any of its obligations hereunder.

(b) By the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(i) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform



this Agreement. This Agreement has been duly authorized, executed and delivered by the Agency.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-laws, restriction, agreement or instrument.

(iii) This Agreement constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(iv) As of the Closing Date, no litigation at law or in equity or proceeding before any Federal, State or local governmental agency involving the Agency is pending or, to the best of its knowledge, after due inquiry, threatened, challenging the Agency's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other transaction of the Agency which is similar hereto, or would materially and adversely affect any of the transactions contemplated by this Agreement.

2. Tax Exempt Status of Facility.

(a) Assessment of Facility. Pursuant to Section 874 of the Act and Section 412-a of the New York Real Property Tax Law ("RP TL"), the parties hereto understand that, upon the first assessment roll of the Town of Bethlehem (the "Town") after the first taxable status date of the Town after the Company Transfer and the execution and delivery of the Lease Agreement between the Agency and the Company, and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, the Facility (i) shall be assessed by the Town and by the various other taxing entities which hereafter may have assessment jurisdiction over the Facility including without limitation the Bethlehem Central School District ("School District"), the County of Albany ("County") and any other political unit wherein the Facility is located (all of such taxing entities being hereinafter collectively referred to as "Taxing Entities" and individually referred to as a "Taxing Entity") and (ii) should be listed as exempt upon the assessment rolls of the respective Taxing Entities. The Company shall, promptly following the Company Transfer and the execution and delivery of the Lease Agreement, take such action as may be necessary to ensure that the Facility shall be assessed and listed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the Company Transfer and the execution and delivery of the Lease Agreement (including without limitation ensuring that a form RP-412-a relating to the Facility is filed with the Town Assessor and with each other assessor charged with preparing the assessment rolls for the various Taxing Entities) and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, but in no event after the Agency transfers title to the Facility to the Company. The Company shall take such further action as may be necessary to maintain such exempt

assessment. The Agency agrees to use its best efforts to assist the Company to both obtain and maintain such exempt assessment. As part of the parties' obligations hereunder with respect to obtaining and maintaining an exempt assessment for the Facility, the parties approve the "Instructions to Assessor" attached as Exhibit B hereto, and the Agency agrees to present these "Instructions to Assessor" to the Town Assessor promptly following the execution and delivery of this Agreement. Notwithstanding the foregoing, neither party agrees or admits that the fair market value of the Facility is the value(s) set forth on Exhibit B. The parties hereto understand that the Facility will not be entitled to such exempt status on the tax rolls until after the Town's March 1, 2002 taxable status date.

(b) Special District Assessments. The parties hereto understand that the tax exemption that is being extended to the Agency by Section 874(1) of the Act and Section 412-a of the RPTL does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company shall pay all special assessments and special ad valorem levies (collectively, the "Special District Assessments") lawfully levied and/or assessed against the Facility for any special improvement districts or special districts (collectively, the "Special Districts"), but such Special District Assessments paid by the Company shall be credited against the PILOT Payments (as defined in Paragraph 3(b) below) for the same year in which the Special District Assessments are paid. Notwithstanding the foregoing and except as may be otherwise agreed between the parties, all Special District Assessments paid by the Company each year shall be credited against and deducted from the PILOT Payments as follows:



(i) All Special District Assessments for the Bethlehem Public Library and any other such charges which are or may be listed on the annual School District tax bill, which is currently issued each year in September ("School District Special District Assessments") shall be deducted from the School District's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b).

(ii) All other Special District Assessments (other than School District Special District Assessments) which are or may be listed on the annual Town and County tax bill, which is currently issued each year in January or which may be billed separately, shall be deducted from the Town's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b). Such Special District Assessments currently include the Selkirk Fire Department and the Bethlehem Ambulance.

(c) Additional Megawatt Facilities. This Agreement applies to the Facility, and the PILOT Payments shall not increase or decrease based on the construction cost of the Facility or any modifications, repairs, additions or deletions thereto so long as no additional structures or facilities are added to the Facility which would increase the Megawatt Rating (the "Additional Megawatt Facilities"). Notwithstanding anything herein to the contrary, the parties hereto agree that in the event the Company decides to construct any Additional Megawatt Facilities, this Agreement shall not apply to any such Additional Megawatt Facilities, and the Company will approach the Agency for purposes of entering into a separate written agreement regarding payments in lieu of taxes with respect to such Additional Megawatt Facilities. In the event the Agency and the Company agree to enter into such a separate written agreement, the

provisions of such agreement shall control with respect to payments in lieu of taxes relating to the Additional Megawatt Facilities. If the parties cannot reach agreement, then such Additional Megawatt Facilities shall not be entitled to the exemption from taxes as provided for in the Act.

3. Payments in Lieu of Taxes.

(a) Prior Tax Payments. The parties acknowledge that the Company (i) has paid all real property taxes and assessments payable to all Taxing Entities with respect to the Facility for the calendar year 2002, (ii) has paid all real property taxes payable to the School District with respect to the Facility for the School District's fiscal year of July 1, 2001 to June 30, 2002 and (iii) will pay the real property taxes and assessments payable to the Town, County and Special Districts with respect to the Facility for the fiscal tax year of each of the Town, County and Special Districts of January 1, 2002 to December 31, 2002 as otherwise agreed to by the Company and the Town.

(b) Agreement to Make PILOT Payments. The Company agrees that it shall make annual payments in lieu of property taxes (the "PILOT Payments") to the Agency on behalf of the respective Taxing Entities in the amounts hereinafter provided. For the School District fiscal year beginning July 1, 2002, and ending June 30, 2003, and provided the Facility is then owned by the Agency, the Company shall, on or before September 30, 2002, make PILOT Payments to the Agency in the amount of \$3,370,541.00 for the School District and \$231,445.00 for the Bethlehem Public Library. Commencing with calendar year 2003 and the Town/County/Special District fiscal tax years beginning January 1, 2003, and continuing through and including the last day of the calendar year 2023, so long as the Facility is owned by the

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"School District PILOT Payments" are 80% of each annual PILOT Payment to the Agency, for the benefit of the School District and the Bethlehem Public Library and any other special improvement district formed by or on behalf of the School District.

(c) Payments after December 31, 2023. Beginning in 2024 and thereafter for so long as the Facility is owned by the Agency, the January and September PILOT Payments shall be equal to the product of the then current assessed value of the Facility as provided for in and established pursuant to RPTL § 520 or any other applicable law, and (taking into account any exemption available under applicable law) as determined by the Town, multiplied by the then current applicable tax rates for the applicable Taxing Entities.

(d) Additional PILOT Payments Based on BEC Facility Performance.

(i) In addition to the PILOT Payments described in Paragraphs 3(b) and (c) above, the Company agrees that it will make additional PILOT Payments in accordance with this subparagraph. If the BEC Facility operates at an average capacity factor percentage above 80% (the "Baseline Capacity Factor") for any two-year period preceding the year of possible payment, the PILOT Payments will increase by \$100,000 for each 1% of actual capacity factor performance (the "Actual Capacity Factor") above the Baseline Capacity Factor (the "Performance Contingency Payment"), but such Performance Contingency Payments shall not exceed \$1,000,000 in any year. The Performance Contingency Payments shall be adjusted to include any fraction of 1%, e.g., if the average Actual Capacity Factor were 81.5%, the Performance Contingency Payment would be \$150,000.

(ii) The Actual Capacity Factor shall be determined over a two year period from July 1 of each year, beginning with the first full calendar year of commercial

operation, to June 30 of the second successive year thereafter (the "Actual Capacity Factor Performance Period").

(iii) The Actual Capacity Factor for the BEC Facility shall be a percentage determined by dividing (A) the actual output of electricity measured in megawatt hours by the BEC Facility during the Actual Capacity Factor Performance Period, measured at the "delivery point," which is the point of interface between the Niagara Mohawk Power Corporation transmission system and the BEC Facility, by (B) the product of the average megawatt capability of the BEC Facility (namely 781 megawatts) multiplied by the total hours over the Actual Capacity Factor Performance Period (using 8760 hours per year for 2 years except that 8784 hours shall be used when the February during any Actual Capacity Factor Performance Period occurs in a leap year). Thus:

$$\text{Actual Capacity Factor} = \frac{\text{Measured plant generation (Mwh)}}{\text{Maximum possible plant generation (Mwh)}}$$

$$\frac{\text{Plant capacity (MW)} \times \text{hours in an Actual Capacity Factor Performance Period}}{\text{Factor Performance Period}}$$

(iv) The determination shall be made within sixty days after each Actual Capacity Factor Performance Period.

(v) These Performance Contingency Payments shall be payable, if applicable, to the Agency beginning in the third full calendar year after the BEC Facility commences commercial operation and shall be split with 80% payable in September and 20% payable in the following January when the PILOT Payments are made. In addition, the



Company shall include with the payments a calculation of the Performance Contingency Payments. The Agency will allocate and distribute any such payments to the Taxing Entities in the same percentage shares as the PILOT Payments. The parties presently anticipate commencement of commercial operations of the BEC Facility in 2004, and therefore, based on that, these Performance Contingency Payments would first be calculated in July/August 2007 based on two full years of operation in 2005 and 2006 and be payable, on an allocated basis, in September 2007 and January 2008.

(vi) There will be no Performance Contingency Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

(vii) Any Performance Contingency Payments will not be increased or decreased because of any modifications, repairs, additions or deletions to or from the BEC Facility, or any increase or decrease in the currently estimated construction cost thereof, so long as the Megawatt Rating is not increased.

(viii) This provision for Performance Contingency Payments shall not apply to the operations of the existing Albany Steam Station.

(c) Billing and Time of Payments. Except for the September 2002 PILOT Payment and any PILOT Payments in 2024 or thereafter, the Company shall make the annual PILOT Payments set forth in Paragraph 3(b) and (d) in two installments as set forth therein. The first 20% installment (the "Town PILOT Payments") shall be payable by the Company not later

than January 30 of each calendar year. The second 80% installment (the "School PILOT Payments") shall be payable by the Company not later than September 30 of each such calendar year. ~~The Agency shall send bills to the Company for each installment, with the bill for the~~ January installment to be issued on or about January 1 and the bill for the September installment to be issued on or about September 1, beginning with a bill for the September 2002 PILOT Payment. The Agency shall distribute any portion of the PILOT Payments received from the Company to any other Taxing Entity entitled to a portion thereof. The Company shall have no obligation to ensure appropriate distributions by the Agency and shall be deemed released from any further obligations for any such payment once it is made to the Agency.

(f) Method of Payments. All payments by the Company hereunder shall be paid in lawful money of the United States of America.

(g) Fiscal Year. Each PILOT Payment covers the fiscal year of each Taxing Entity in which the payment date for the PILOT Payment occurs.

4. Late Payments.

(a) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(b) Thereafter. If the Company shall fail to make any payment required by this Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the

Company until such payment in default shall have been made in full, and the Company shall pay the same together with (1) a late payment penalty of one percent (1%) per month on the delinquent amount for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per annum, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

(c) Distributions by Agency to Taxing Entities. Any penalties or interest due to any Taxing Entity for late payment or distribution of any PILOT Payment shall be paid by the Agency and not the Company, provided the Company has made any such PILOT Payment in a timely manner or has paid any penalty or interest due thereon as set forth in subparagraphs (a) and (b) above.

5. Credit for Taxes Paid.

(a) The parties agree that should under any subsequently adopted State or local law the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other general governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including (i) sales and use taxes, and (ii) special assessments of any nature, special ad valorem charges of any nature or governmental charges in the nature of utility charges, including, but not limited to, water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company's obligation hereunder to make PILOT Payments in such calendar year shall be reduced by the



amounts which the Company shall have so paid or be obligated to pay to such Taxing Entity in such calendar year. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Paragraph 5, such notice to be given by the Company at least 10 days prior to the final date on which such PILOT Payment is due pursuant to the provisions of Paragraph 3.

(b) In the event that all, or substantially all, of the Facility is declared to be subject to taxation for real property taxes or assessments (other than special assessments) by an amendment to the Act, other legislative charge, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall be null and void.

6. Characterization of PILOT Payments. The parties acknowledge that in the New York Public Service Commission ("Commission") Order dated April 18, 2000, approving the sale of the Albany Steam Station to the Company, the Commission determined that the purchase price for the Albany Steam Station established the fair market value thereof. (Case 94-E-9-0098, pg. 28). The parties also acknowledge that if the Town and other Taxing Entities levied taxes on the existing Albany Steam Station based upon the Commission's determination that the Albany Steam Station's fair market value is represented by the purchase price the Company paid for such facility, the total real property taxes, special assessments and special ad valorem levies thereon by the Taxing Entities (collectively, the "Taxes") for years 2000 through 2003 would be substantially less than the PILOT Payments for 2002-2003 as described in Paragraph 3 hereof or the taxes for 2000-2001 as described in that certain Memorandum of

Year	Approximate Taxes Based on ORPS Value of \$82.6 million	PILOT Payments or Taxes per this Agreement and the MOU	Community Benefit
2000	\$1,980,000	\$5,500,000	\$3,520,000
2001	\$2,065,000	\$5,000,000	\$2,935,000
2002	\$2,150,000	\$4,500,000	\$2,350,000
2003	\$2,230,000	\$4,000,000	\$1,770,000

8. No Agency Representation. Notwithstanding anything to the contrary contained herein, the parties hereto acknowledge and agree that the Agency has neither made nor hereby makes any representation or warranty to the Company as to the availability of, or entitlement of any person to, any exemption from taxation by any governmental body under the laws of the State for the Facility or any of the transactions contemplated herein.

(a) After the date of the Agency Transfer, the Facility shall become subject to taxes and assessments in accordance with RPTL Sections 302 and 520. Notwithstanding the foregoing, there shall be deducted from such taxes and assessments any PILOT Payments previously paid pursuant to this Agreement by the Company relating to any period of time after

the date of the Agency Transfer. If any Taxing Entity refuses to permit such a deduction, the Company shall be entitled to receive and collect from any such Taxing Entity the amount which would have been deductible pursuant to the terms hereof within thirty (30) days of such refusal.

(b) The PILOT Payments provided for herein shall no longer apply or be payable in connection with the Facility, and this Agreement shall terminate, except that the provisions of this Paragraph and Paragraphs 10 and 13 shall survive any such termination.

(c) Neither the Agency nor any of the Taxing Entities shall be entitled to collect or receive any taxes and assessments on the Facility other than the PILOT Payments provided for herein related to the period of time before the Agency Transfer, provided the Company has made such payments and has paid the Agency's reasonable and necessary fees and expenses as provided for in the Lease Agreement.

(d) The Company shall not be entitled to any refund of PILOT Payments provided for herein and paid by the Company, except as provided in Paragraph 9(a) above.

10. No Recourse; Limited Obligation of Agency.

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations (collectively, the "Obligations") of the Agency contained in this Agreement shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "Employee of the Agency") in his individual capacity, and no recourse under or upon any Obligation contained in this Agreement, or for any claim based thereon or otherwise in respect hereof, shall be had against any past, present or future Employee

of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person so executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement, it being expressly understood that this Agreement contains solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement or under or by reason of the Obligations, contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the Obligations contained in this Agreement implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. Except for the last sentence of Paragraph 9(a) hereof, the Obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligation of the State of New York or of the Town of Bethlehem, New York and neither the State of New York, nor the Town of Bethlehem, New York shall be liable thereon, and further, such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease or other disposition of the Facility.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, no order or decree of specific performance with respect to any of the obligations of



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to the Agency's obligation to distribute PILOT Payments as provided for in Paragraph 3(c) and to pay penalties or interest as provided for in Paragraph 4(c).

(d) Agency Reliance. The Agency may rely conclusively on any notice, certificate or other document furnished to it under this Agreement and reasonably believed by it to be genuine. Except for the Agency's obligations under Paragraphs 3(c) and 4(c), the Agency shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or in good faith omitted to be taken by it and reasonably believed to be beyond such discretion or power, or taken by it pursuant to any direction or instruction by which it is governed under this Agreement, or omitted to be taken by it by reason of the lack of direction or instruction required for such action under this Agreement, and shall not be responsible for the consequences of any error of judgment reasonably made by it. A permissive right or power to act shall not be construed as a requirement to act, and no delay in the exercise of a right or power shall affect the subsequent exercise thereof. The Agency shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person except by its own members, officers and employees.

11. Events of Default. Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay or cause to be paid any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of thirty (30) days after written notice to the Company stating that such payment is due and payable. Any

such notice shall identify, with reasonable detail, the amount of the payment which is due, the payee, the due date, and the basis or requirement for such payment.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement hereunder on its part to be observed or performed (other than as referred to in Paragraph (a) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the default within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default. Any such notice shall describe, in reasonable detail, the nature of the default and the basis or requirement for action or performance by the Company for which the Agency has determined the Company to be in default.

(c) An Event of Default under and as defined in the Lease Agreement.

12. Remedies on Default.

(a) General. Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the obligations, agreements or covenants of the Company under this Agreement; provided, however, that the Agency shall not be entitled to sell the Facility.



(d) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

13. Payment of Attorney's Fees and Expenses. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, and provided the Agency or Taxing Entity is successful in such collection effort, pay to the Agency or such Taxing Entity,

as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced,

14. Remedies; Waiver and Notice.

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

(b) Delay. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Lease Agreement or applicable law.

(d) No Waiver. In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(c) Paragraph Headings Not Controlling. The headings of the several Paragraphs in this Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agreement.

15. Notices. All notices, demands, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chairman

With a copy to:

McNamee, Lochner, Titus & Williams, P.C.  
75 State Street  
P.O. Box 459  
Albany, New York 12201-0459  
Attention: Thomas P. Connolly, Esq.

To the Company:

PSEG Power New York Inc.  
80 Park Plaza  
Newark, New Jersey 07102  
Attention: Legal Department

and



18. Binding Effect; Assignment.

(a) This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Company, the Agency and the respective Tax Entities.

(b) This Agreement may be assigned by the Company without the consent of the Agency. The Company shall provide written notice of any assignment to the Agency prior to the effective date of such assignment. Any assignment shall be on the following conditions, as of the time of such assignment:

(i) No assignment shall relieve the Company from secondary liability for any of its obligations hereunder in the event that the assignee shall default in its obligations hereunder or under this Agreement following a material breach which remains uncured for the requisite period and following the exercise by the Agency of its remedies hereunder and pursuant to the Lease Agreement;

(ii) Any assignee shall assume the obligations of the Company hereunder;

(iv) The Company shall, within ten (10) business days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of each the assignment and the instrument of assumption;

(v) The proposed assignee's use of the Facility shall constitute a "project" under the Act; and

(vi) No Event of Default exists under this Agreement.

(c) It is anticipated that the Company may pledge and assign its rights to and interest in this Agreement to the Lender (as defined in the Lease Agreement) as security for the payment of the principal of and interest on the Loans (as defined in the Lease Agreement). The Agency hereby acknowledges and consents to such pledge and assignment by the Company.

19. Company to Maintain Its Existence; Conditions Under Which Exceptions Permitted. The Company agrees that during the term of this Agreement the Company will maintain its corporate existence, will not dissolve or otherwise dispose of all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default specified herein shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States of America, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another such domestic corporation, all or substantially all of its assets as an entirety, provided (a) that the surviving, resulting, or transferee corporation, as the case may be, is incorporated under the laws of the State or qualifies to do business in the State, and (b) that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Company under this Agreement and any other agreement securing the Company's performance of its obligations hereunder.



20. Severability. In the event any immaterial provision of this Agreement shall for any reason be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. In the event any material provision of this Agreement is so held to be invalid or unenforceable, the parties shall negotiate in good faith to attempt to amend this Agreement to accomplish the objectives contemplated herein.

21. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

22. Definitions. All capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned below:

- "Article X Application" means the application by the Company to the New York State Board on Electric Generating Siting and the Environment for a Certificate to Construct the Facility pursuant to Article X of the Public Service Law.
- "Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics'.

Equity Method = 60% of 100% = 60%

- 

- 7.517780E+12

- *Energy Reimbursement Payment* = [Five Percent Discount] × [Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter] × [Agency Load] × [BEC Facility Capacity Factor for the Quarter] × hours in the Quarter × [85% efficiency factor for the First Discount Period and Second Discount Period, and 75% efficiency factor for the Third Discount Period and following the Third Discount Period]



(b) The following definitions shall apply to the provisions for Energy Reimbursement Payments in this paragraph:

- "BEC Facility" means the combined cycle plant constructed on the Land. The BEC Facility nameplate capability is 763 megawatts for the summer capability period (May through October) and 800 megawatts for the winter operating period (November through April).
- "Five Percent Discount" means five percent (5%) of the price posted by the New York Independent System Operator ("NYISO") Day Ahead Market ("DAM") Locational Based Marginal Price ("LBMP").
- "Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter" means the sum of the products for the Quarter of the NYISO DAM LBMP for each hour in which the BEC Facility generates power multiplied by the megawatts generated during the hour with that sum divided by the total megawatt hours generated during each of said hours for the Quarter (e.g.,  $[\$3 \text{ DAM LBMP Clearing Price for hour ending 1 on } 10/1/04 \times 10 \text{ megawatts generated for the hour}] + [\$6 \text{ DAM LBMP Clearing Price for hour ending 2 on } 10/1/04 \times 20 \text{ megawatts generated for the hour}] \div [30 \text{ megawatt hours generated for the period}] = \$5 \text{ generator weighted DAM LBMP clearing price for the BEC Facility bus.}$



by the plant over the Quarter divided by the product of the average nameplate capability, 781 megawatts, of BEC multiplied by the hours in the Quarter.

(c) The Agency shall have the right to request adjustment of any payment made by the Company for any errors in arithmetic, computation, estimating or otherwise no later than twelve (12) months after the date that the payment is rendered. Any request for adjustment shall be in writing and shall state the specific basis for the adjustment. A payment shall be binding on the Agency twelve (12) months after the payment is made.

(d) The Agency shall be responsible for and pay, or cause to be paid, any and all taxes levied on the Energy Reimbursement Payments made by the Company hereunder.

(e) If any of the items used to compute the Energy Reimbursement Payment becomes unavailable, then the parties shall use good faith efforts to develop a substitute for such item in order to place the parties in the same economic position each would had been in had such item continued to have been available.

(f) There will be no Energy Reimbursement Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

By: Jeffrey W. Moore  
Name: Jeffrey W. Moore  
Title: Vice President

COUNTY OF ALBANY )

55

Maureen A. Kucharski

MAUREEN A. KUCHARSKI  
Notary Public, State of New York  
No. 01KU4855324  
Qualified in Rensselaer County  
Commission Expires June 23, 2022

STATE OF NEW JERSEY )  
 )  
COUNTY OF ESSEX )

ss:

On the 5 day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey W. Moore, 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 Agreement for Payment in lieu of Taxes, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Agreement for Payment in lieu of Taxes, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

  
Notary Public

MARY PATRICIA CORCORAN  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 6/1/2006

Exhibit A

(Description of the Land)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem, County of Albany and State of New York, being further described as follows:

Beginning at a point at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara Mohawk Power Corporation ("Niagara") by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, Page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following seven (7) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08°37'25" W a distance of 212.38 feet to a point; (2) N 02°34'59" W a distance of 292.44 feet to a point; (3) N 03°04'27" E a distance of 800.80 feet to a point; (4) N 07°22'16" E a distance of 831.38 feet to a point; (5) N 13°31'57" W a distance of 30.80 feet to a found concrete monument; (6) N 11°17'47" W a distance of 229.80 feet to a found concrete monument; (7) N 28°40'11" W a distance of 8.60 feet to a point therein where the same is intersected by the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following four (4) courses along said dividing line: (1) N 66°48'12" E through a metal rod and cap set at a distance of 2.45 feet from the east line of New York State Highway #193, Route #144 (River Road) a total distance of 213.71 feet to a rod and cap set; (2) S 77°11'59" E a distance of 89.66 feet to a metal rod and cap set; (3) N 67°55'30" E a distance of 646.83 feet to a metal rod and cap set; (4) N 63°05'59" E passing through a metal rod and cap set at 217.64 feet a total distance of 264.94 feet to a point on the westerly line of the "BEACON ISLAND DIKE" as shown on a plan entitled "Albany Steam Station Lands Under Water at Island Creek" prepared by Niagara and having a drawing number of G-3539-E; thence S 08°57'11" E along said westerly line a distance of 86.36 feet to a point; thence N 78°22'58" E a distance of 122.49 feet to a point on the U.S. Pier Head line as established by the U.S. Army Corps of Engineers May 10, 1934 and being further described as being point number 218A as shown on the said plan entitled "Albany Steam Station Lands Under Water at Island Creek"; thence S 11°37'12" E along said Pier Head line a distance of 2085.82 feet to a point in the southeasterly corner of lands conveyed to Niagara as described in Book 1228 of Deeds, Page 195 being a corner in the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following five (5) courses along said dividing line: (1) S 67°30'33" W a distance of 130.00 feet to a metal rod and cap set; (2) S 07°29'12" E a distance of 279.62 feet to a point; (3) S 75°58'09" W a distance of 827.00 feet to a metal rod and cap set; (4) N 26°11'21" W a distance of 148.73 feet to a found concrete monument; (5) S 67°30'33" W a distance of 833.05 feet to the point of beginning (the "Premises"), comprising of an area of 83.50 acres as shown on a Survey of James M. Zuccolotto, N.Y.S.P.L.S., dated November 16, 1999, last revised March 13, 2000, consisting of four (4) sheets, and filed in the Albany County Clerk's Office in Map Drawer 172 as Map No. 10859 on March 20, 2000 (the "Survey").



Bearings and coordinates refer to the N.Y. State Plane Coordinate System (Eastern Zone - NAD '83) based on control established by G.P.S. and adjusted to the published coordinates for N.G.S. horizontal control stations "Rensselaer", "Schodack" and "New Scot". Distances are grid distances.

BEING the same premises or a portion thereof described in the following instruments: deed from New York State Realty Terminal Company to Niagara recorded in the Albany County Clerk's Office in Book 1265 of Deeds at page 75; deed from Hudson River Estates, Inc. and the Delaware and Hudson Railroad Corporation to Niagara recorded in the Albany County Clerk's Office in Book 1307 of Deeds at page 479; Letters Patent issued June 10, 1953 to Niagara recorded in the Albany County Clerk's Office in Book 1376 of Deeds at page 75; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1420 of Deeds at page 367; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1491 of Deeds at page 139; and deed from Sun Oil Company to Niagara recorded in the Albany County Clerk's Office in Book 1228 of Deeds at page 195.

TOGETHER WITH an easement to build, maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a water main and related equipment over lands now or formerly owned by Niagara, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point, said point being the intersection of the northerly line of the Premises with the center line of an existing eight inch water main, said point being further described as being 13.5 feet  $\pm$  easterly and 110 feet  $\pm$  southerly of center line station 71+43.58 of the former Delaware and Hudson Railroad Susquehanna Division spur to Cabbage Island, Railroad Valuation map V4-142-B; thence northerly parallel to and 10 feet distant easterly of the center line alignment of the said Delaware and Hudson Railroad line a distance of 2700 feet  $\pm$  to a point; thence westerly crossing said center line a distance of 27 feet  $\pm$  to a point; thence northerly parallel to and approximately 13.5 feet westerly of the center line of the former Delaware and Hudson Railroad line a distance of 2-15  $\pm$  feet to a point; thence northeasterly, northerly and northwesterly crossing the Island Creek Diversion Channel (Normans Kill) on the west side of a railroad bridge a distance of 355 feet  $\pm$  to a point; thence northwesterly a distance of 300 feet  $\pm$  to a point on the northerly line of lands now or formerly owned by Niagara, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH all right, title and interest of Grantor under a grant made by Hudson River Estates, Inc. to Niagara dated October 21, 1963 recorded in the Albany County Clerk's Office on January 17, 1964 in Book 1782 of Deeds at Page 245, a grant made by Albany Port District Commission to Niagara dated June 30, 1952 recorded in the Albany County Clerk's Office on July 10, 1952 in Book 1318 of Deeds at Page 385, as amended by an Amendment to



1952 Indenture of the Albany Port District Commission, dated May 11, 2000, recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 945 and under a letter agreement, dated June 12, 1952 between The Delaware and Hudson Railroad Corporation and Niagara, subject to any burdens set forth in the above-referenced grants or the above-referenced letter agreement.

TOGETHER WITH an easement to maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a forced main sanitary sewer line over lands now or formerly owned by Niagara and Consolidated Rail Corporation, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point at the intersection of the westerly line of New York State Highway #193, Route #144 (River Road) with the centerline of the existing 4" force main sanitary sewer, said point being approximately 175 feet south of New York State Survey Station 272+50, said survey station shown on drawings by the New York State Department of Transportation No. RC 45-28 River Road S.H. #193; thence northwesterly a distance of 424 feet ± to a point; thence continuing northwesterly on a line deflecting to the right at an angle of 25° 42' a distance of 700 feet ± to a point; thence continuing northwesterly on a line deflecting to the left at an angle of 42° 15' a distance of 508 feet ± to a point; thence westerly on a line deflecting to the left at an angle of 45° a distance of 323 feet ± to a point; thence northwesterly on a line deflecting to the right at an angle of 45° a distance of 67 feet ± to a point on the southerly line of the Feura-Bush-Glenmont Road, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT to the terms of a Grant of Easement for a sewer main between Consolidated Rail Corporation and Niagara dated December 17, 1992 and recorded in the Albany County Clerk's Office on December 30, 1993 in Book 2500 of Deeds at Page 391, as shown on a map annexed to the foregoing Grant of Easement identified as "Map NMP - 137 Albany Steam Station Detail of 4" Force Main Sanitary Sewer Crossing at Penn Central Railroad" at Book 2500 of Deeds at Page 630 and as shown on Sheet 4 of the Survey.

TOGETHER WITH an easement to install, maintain, repair, modify, enlarge, inspect, remove, patrol and replace a water service line to tap into the sixteen (16) inch water main described in an Indenture, made the 29th day of January, 1979 by and between Niagara and the Town of Bethlehem and recorded in the Albany County Clerk's Office on February 14, 2000 in Book 2650 of Deeds at page 108 over lands now or formerly owned by Niagara, 15 feet in width 7.5 feet on each side of the following described centerline:

Commencing at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara by

deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following three (3) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08° 37' 25" W a distance of 212.38 feet to a point; (2) N 2° 34' 59" W a distance of 292.44 feet to a point; (3) N 03° 04' 27" E a distance of 603.93 feet to a point; thence S 87° 31' E, crossing Route #144 (River Road) New York State Highway #193, a distance of approximately 67.5 feet to a point on the west line of said highway to the point and place of beginning of said centerline; thence S 87° 31' E through the lands now or formerly owned by Niagara approximately 20 feet to the existing Town of Bethlehem waterline and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT TO the terms of an easement granted to Niagara dated June 15, 1953 and recorded in the Albany County Clerk's Office on July 13, 1953 in Book 1365 of Deeds at Page 225, as shown on Sheets 2 and 3 of the Survey.

TOGETHER WITH the appurtenances, including riparian rights, if any, and all the estate and rights of Grantor in and to the Premises and together with all right, title and interest of Grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the Premises.

SUBJECT TO all other easements, covenants, restrictions and other encumbrances of record.

SUBJECT TO terms, covenants, conditions and provisions of the Letters Patent granted by the People of the State of New York recorded in the Albany County Clerk's Office in Liber 837 of Deeds at page 226, Liber 850 of Deeds at page 432 and Liber 1376 of Deeds at Page 75 to the extent they affect the Premises.

SUBJECT TO any and all right, title and interest the public may have in and to the public highways running through or adjacent to the Premises.

Being and intending to describe the same premises described in a deed from Niagara to Grantor dated May 11, 2000 recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 935.

TOGETHER WITH THE BENEFITS of a Sound Easement Agreement between Niagara and Grantor dated as of May 11, 2000 and recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 889.

TOGETHER WITH AND SUBJECT TO the terms of a Site Agreement between Grantor and Niagara dated as of February 1, 2000.

TOGETHER WITH AND SUBJECT TO the terms of a Site Agreement between Grantor and Niagara dated as of February 1, 2000.

Exhibit B

Date: February 5, 2002

## -Instructions to Town Assessor

The real property described in Exhibit A and the improvements thereon (collectively, the "Facility") should be carried on the tax rolls as exempt. The Town of Bethlehem Industrial Development Agency (the "Agency") and PSEG Power New York Inc. (the "Company") have entered into a payment in lieu of taxes agreement (the "PILOT Agreement") pursuant to which the Company is obligated to make the payments in lieu of real property taxes and general assessments (the "PILOT Payments") set forth in such PILOT Agreement.

In addition, the Company shall pay to all governmental bodies having the power to levy special ad valorem levies and special assessments including the Town of Bethlehem and the County of Albany all special ad valorem levies and special assessments levied against the Facility and to deduct such payments from the PILOT Payments. Therefore, the Agency and the Company request the assessor of the Town of Bethlehem to establish the following assessed values for the Facility:

<u>Calendar Year</u>	<u>Assessed Value</u>
2002	164,316,000
2003	142,000,000
2004	100,000,000
2005	100,000,000
2006	100,000,000
2007	100,000,000
2008	100,000,000
2009	100,000,000
2010	100,000,000
2011	100,000,000
2012	100,000,000
2013	100,000,000
2014	100,000,000
2015	100,000,000
2016	100,000,000
2017	100,000,000
2018	100,000,000
2019	100,000,000
2020	100,000,000
2021	100,000,000
2022	100,000,000
2023	100,000,000







ACE American Insurance Company  
Illinois Union Insurance Company  
Westchester Fire Insurance Company  
Westchester Surplus Lines Insurance Company  
[LIST ONLY THE COMPANY THAT APPLIES]

## ACE Municipal Advantage<sup>SM</sup> Public Entity Liability Policy Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND WHICH ARE THE RESULT OF WRONGFUL ACTS COMMITTED BEFORE THE END OF THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II, DEFINITIONS.

Policy No.	
Item 1. <b>Public Entity:</b>	Principal Address:
Item 2. <b>Policy Period:</b> From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)	
Item 3. Limits of Liability Each <b>Claim</b> and in the Aggregate for all <b>Claims</b> including <b>Claims Expenses</b> :	\$
Item 4. Retention	
A. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IA.1: \$ Zero each <b>Claim</b>	
B. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IA.2 and IB: \$ each <b>Claim</b>	
C. For <b>Damages</b> and <b>Claims Expenses</b> under Insuring Agreement IC: \$ each <b>Claim</b>	

Item 5. Notice to **Insurer**:

A. Notice of **Claim** or **Wrongful Act**:

[Company]  
[Address]  
[Address]  
[Fax Number]

B. All other notices:

Chief Underwriting Officer  
[Company]  
[Address]  
[Address]

Item 6. **Policy** Premium: \$

Item 7. **Extended Reporting Period**:

A. Additional Premium: \_\_\_\_% of Annual Premium

B. Additional Period: \_\_\_\_\_

Item 8. **Crisis Management Fund**:

\$25,000

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.

DATE: \_\_\_\_\_  
Authorized Representative





ACE American Insurance Company  
Illinois Union Insurance Company  
Westchester Fire Insurance Company  
Westchester Surplus Lines Insurance Company  
[LIST ONLY THE COMPANY THAT APPLIES]

## ACE Municipal Advantage<sup>SM</sup> Public Entity Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions, limit of liability and other provisions of this **Policy**, the **Insureds** and the **Insurer** agree as follows:

### I. INSURING AGREEMENTS

#### A. Public Entity Management Liability

##### 1. Public Officials' Liability

The **Insurer** will pay on behalf of the **Insured Persons** all **Damages** and **Claims Expenses** for which the **Insured Persons** are not indemnified by the **Public Entity** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

##### 2. Public Entity Reimbursement

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** has indemnified the **Insured Persons** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

#### B. Public Entity Liability

The **Insurer** will pay on behalf of the **Public Entity** all **Damages** and **Claims Expenses** for which the **Public Entity** becomes legally obligated to pay by reason of a **Claim** first made against the **Public Entity** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

#### C. Employment Practices Liability

The **Insurer** will pay on behalf of the **Insureds** all **Damages** and **Claims Expenses** for which the **Insureds** become legally obligated to pay by reason of a **Claim** first made against them and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**.

#### D. Public Entity Crisis Management Coverage

The **Insurer** will pay on behalf of the **Public Entity** the **Crisis Management Expense** for which the **Public Entity** becomes legally obligated to pay by reason of a **Crisis Event** first occurring during the **Policy Period**, but only up to the limit of liability for the **Crisis Management Fund**.

### II. DEFENSE

- A. The **Insurer** shall have the right and duty to defend any covered **Claim** made against the **Insured** and reported to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for any **Wrongful Act** taking place prior to the end of the **Policy Period**, even if such **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the **Insurer**, and the **Insurer** shall have



the right to appoint counsel and to make such investigation and defense of a covered **Claim** as it deems necessary.

- B. Solely with respect to Insuring Agreements I.A.2, **Public Entity** Reimbursement, and I.B, **Public Entity** Liability, the **Insurer** shall not settle any **Claim** without the written consent of the **Public Entity**. The **Insurer** shall have the right to settle any **Claim** at its sole discretion with respect to all other Insuring Agreements. If the **Public Entity** refuses to consent to a settlement or a compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability under this **Policy** with respect to such **Claim** shall be reduced to (1) the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred until the date of such refusal, and (2) 50% of all subsequent covered **Claims Expenses** in excess of such amount, which sum shall not exceed the unexhausted Limits of Liability specified in Item 3 of the Declarations. The remaining 50% of **Claims Expenses** and all subsequent **Damages** shall be borne uninsured by the **Insureds** and at their own risk. In such event, the **Insurer** shall tender a check to the **Insured** for the recommended settlement amount, and shall be relieved of any further duty or obligation, except as otherwise stated in this subsection B.
- C. The **Insurer** shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle, any **Claim** after any applicable Limit of Liability specified in Item 3 of the Declarations has been exhausted by payment of **Damages** and **Claims Expenses**, or by any combination thereof, or after the **Insurer** has deposited the remainder of any unexhausted applicable Limit of Liability into a court of competent jurisdiction. In such case, the **Insurer** shall withdraw from the investigation, defense, payment or settlement of such **Claim** and shall tender the investigation, defense and control of such **Claim** to the **Insured**.
- D. The **Insureds** shall cooperate with the **Insurer**, and provide to the **Insurer** all information and assistance which the **Insurer** reasonably requests including but not limited to attending hearings, depositions and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**. The **Insureds** shall do nothing that may prejudice the **Insurer's** position. The **Insureds** shall immediately forward to the **Insurer**, at the address indicated in Item 5A of the Declarations, every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives.

### III. DEFINITIONS

When used in this **Policy**:

- A. **Adverse Publicity** means the publication of unfavorable information regarding the **Public Entity** which can reasonably be considered to materially reduce public confidence in the competence, integrity or viability of the **Public Entity** to conduct business. Such publication must occur in a report about an **Insured** appearing in:
  - 1. a daily newspaper of general circulation; or
  - 2. a radio or television news program.
- B. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any **Policy** of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information and materials are deemed attached to and incorporated in this **Policy**.
- C. **Bodily Injury** means physical injury to the body, physical pain, sickness, disease, and death. **Bodily Injury** also means mental distress, mental injury, mental anguish, mental tension, pain and suffering, shock and humiliation (collectively "**Mental Distress**"), but only if such **Mental Distress** arises from and is accompanied by injury to the claimant's body, sickness, disease or death.

D. **Claim** means:

1. a written demand against any **Insured** for monetary **Damages** or non-monetary or injunctive relief;
2. a civil proceeding against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading;
3. a binding arbitration proceeding, only if the **Insurer** has provided its prior written consent to such proceeding, against any **Insured** seeking monetary **Damages** or non-monetary or injunctive relief;
4. a civil, administrative or regulatory proceeding against any **Insured** commenced by the issuance of a notice of charge or formal investigative order, including without limitation any such proceeding by or in association with the Equal Employment Opportunity Commission or any other similar federal, state or local governmental authority located anywhere in the world;
5. a civil, administrative or regulatory investigation against any **Insured**, commenced by the service upon or other receipt by any **Insured** of a written notice or subpoena from the investigating authority identifying any **Insured** as an individual against whom a civil, administrative or regulatory investigation or proceeding is to be commenced; or
6. solely with respect to coverage provided under Insuring Agreement I.C, a written request of the **Insured** to toll or waive a statute of limitations applicable to a **Claim** described in paragraphs 1 through 5 above.

including any appeal therefrom. However, **Claim** shall not include a labor or grievance arbitration or proceeding which is subject or pursuant to a collective bargaining agreement

E. **Claims Expenses** means:

1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in the investigation and defense of covered **Claims**;
2. reasonable and necessary premiums for any appeal bond, attachment bond or similar bond, provided the **Insurer** shall have no obligation to apply for or furnish such bond; and
3. prejudgment and post-judgment interest awarded in any **Claim**.

**Claims Expenses** shall not include wages, salaries, fees or costs of directors, officers or **Employees** of the **Insurer** or the **Insured** or **Crisis Management Expenses**.

F. **Crisis Event** means one of the following, except where coverage is otherwise excluded under Exclusions H and R of the **Policy**.

1. Management Event: The incapacity, death or state or federal criminal indictment of an **Insured Person** for whom the **Public Entity** has purchased and continues to maintain key individual life insurance;
2. Funding Cancellation: The cancellation, withdrawal or revocation of \$500,000 or more in funding, donation(s), grant(s) or bequest(s) by a non-government entity or person to the **Public Entity**;
3. Bankruptcy: The disclosure by the **Public Entity** of (a) its intention to file or its actual filing for protection under federal bankruptcy laws, or (b) a third-party's intention to file or its actual filing of an involuntary bankruptcy petition under federal bankruptcy laws with respect to the **Public Entity**;
4. Employment Event: The disclosure by the **Public Entity** of the threatened or actual commencement by a third-party of an action, audit or investigation alleging a **Wrongful Employment Practice** by the **Public Entity** which has caused or is reasonably likely to cause **Adverse Publicity**; and



5. **Material Event:** Any other material event which, in the good faith opinion of the **Public Entity**, has caused or is reasonably likely to result in **Adverse Publicity**, but only if such material event is scheduled for coverage by written endorsement to this **Policy**.
- G. **Crisis Management Expense** means the following expenses incurred by the **Public Entity** during a period beginning ninety (90) days prior to and in reasonable anticipation of a **Crisis Event** and ending ninety (90) days after an actual or reasonably anticipated **Crisis Event**, irrespective of whether a **Claim** is actually made with respect to the subject **Crisis Event**; provided, however, that the **Insurer** must have been notified of the **Crisis Management Expense** within thirty (30) days of the date the **Public Entity** first incurs the subject **Crisis Management Expense**:
1. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for **Crisis Management Services** provided to the **Public Entity** by a **Crisis Management Firm**, and
  2. The reasonable and necessary expenses directly resulting from a **Crisis Event** which the **Public Entity** incurs for (a) advertising, printing, or the mailing of matter relevant to the **Crisis Event**, and (b) out of pocket travel expenses incurred by or on behalf of the **Public Entity** or the **Crisis Management Firm**; provided, however, **Crisis Management Expense** does not include those amounts which otherwise would constitute compensation, benefits, fees, overhead, charges or expenses of an **Insured** or any of the **Insured's Employees**.
- H. **Crisis Management Firm** means a marketing firm, public relations firm, law firm, or other professional services entity retained by the **Insurer**, or by the **Public Entity** with the **Insurer's** prior written consent, to perform **Crisis Management Services** arising from a **Crisis Event**.
- I. **Crisis Management Fund** means the amount specified in Item 8 of the Declarations.
- J. **Crisis Management Services** means the professional services provided by a **Crisis Management Firm** in counseling or assisting the **Public Entity** in reducing or minimizing the potential harm to the **Public Entity** caused by the public disclosure of a **Crisis Event**.
- K. **Damages** means compensatory damages, judgments, any award of prejudgment and post-judgment interest, and settlements which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. Such damages include punitive and exemplary damages and the multiple portion of any multiplied damage award, if and to the extent such damages are insurable under the law of the applicable jurisdiction most favorable to the insurability of such damages.

With respect to any **Claim** arising out of a **Wrongful Employment Practice**, **Damages** shall also mean:

1. front-pay and back-pay, except as otherwise stated below; and
2. liquidated damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act.

**Damages** shall not include:

1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
2. taxes, fines or penalties;
3. matters uninsurable under the laws pursuant to which this **Policy** is construed;
4. employment-related benefits, retirement benefits, perquisites, vacation and sick days, medical and insurance benefits, deferred cash incentive compensation or any other type of compensation other than salary, wages, bonuses, commissions and non-deferred cash incentive compensation;



5. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief;
  6. any liability or costs incurred to modify any building or property to make it more accessible or accommodating to any person, or any liability or costs in connection with any educational, sensitivity or other corporate program, policy or seminar;
  7. **Crisis Management Expenses**; or
  8. liquidated damages, except to the extent specifically included as **Damages** above.
- L. **Employee** means any natural person whose labor or services are engaged and directed by the **Public Entity** (including any part-time, seasonal and temporary employee or volunteer), but only while acting in his or her capacity as such, and any natural person who is leased to the **Public Entity**, but only if the **Public Entity** provides indemnification to such leased person in the same manner as is provided to the **Public Entity's** employees.
- M. **Extended Reporting Period** means the period for the extension of coverage, if elected, described in Section VII, **Extended Reporting Periods**.
- N. **Incidental Medical Malpractice** means injury arising out of emergency medical services rendered or which reasonably should have been rendered to any person or persons during the **Policy Period** by any duly certified emergency medical technician, paramedic or nurse who is an **Employee** of the **Public Entity** or acting on its behalf to provide such services, but is not employed, either full-time or part-time, at a hospital, clinic or nursing home facility. **Incidental Medical Malpractice** also includes injury arising out of the dispensation of prescribed medicine.
- O. **Insured** means the **Public Entity** and any **Insured Persons**;
- P. **Insured Persons** means the following, but only to the extent such persons are acting solely in their capacities as legally authorized representatives of the **Public Entity**:
1. all persons who were, now are or shall be lawfully elected or duly appointed officials or **Employees**;
  2. commissions, boards, or other units, and members and **Employees** thereof, operated by and under the jurisdiction of such **Public Entity** and within an apportionment of the total operating budget indicated in the application for this **Policy**;
  3. volunteers acting for or on behalf of, and at the written request and under the direction of, the **Public Entity**;
  4. elected or duly appointed officials and **Employees** of the **Public Entity** duly appointed at the written request of the **Public Entity** to serve with an outside tax exempt entity;
  5. any person providing services for the **Public Entity** under a mutual aid or similar written agreement; and
  6. elected or duly appointed officials and **Employees** of the **Public Entity** as a director or officer of a non-profit organization created and operated under Section 501c(3) of the Internal Revenue code of 1988, amended, for any **Wrongful Acts** they have committed in their respective capacities as a director or officer of such non-profit organization, provided that: (1) the appointment of the elected or duly appointed official or **Employee** to such non-profit organization is based solely upon the person's being an elected or duly appointed official or **Employee** of the **Public Entity**; and (2) such elected or duly appointed official or **Employee** is directed in writing by the **Public Entity** to serve as a director or officer of such non-profit organization prior to beginning such service.
- Q. **Insurer** means the insurance company providing this insurance.



- R. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- S. **Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
  2. malicious prosecution;
  3. libel, slander or other defamatory or disparaging material;
  4. publication or an utterance in violation of an individual's right to privacy; and
  5. wrongful entry or eviction, or other invasion of the right to private occupancy.
- T. **Policy** means, collectively, the Declarations, the **Application**, this **Policy**, including any endorsements.
- U. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XIV, Termination of the **Policy**.
- V. **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials, including materials to be recycled, reconditioned, or reclaimed. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi) and electric or magnetic or electromagnetic field.
- W. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible or intangible property, including the loss of use thereof; and
  2. loss of use of tangible or intangible property which has not been physically injured, lost, damaged or destroyed.
- X. **Public Entity** means the municipality, governmental body, department or unit which is named in Item 1 of the Declarations.
- Y. **Retaliation** means retaliatory treatment on account of:
1. the actual or attempted exercise by an **Employee** of any rights of such an **Employee** under law, including workers' compensation laws, the Family and Medical Leave Act, and the Americans with Disabilities Act;
  2. the filing of any claim under any statute, rule or regulation to protect an **Employee** from discrimination by his or her employer if such **Employee** discloses or threatens to disclose to a superior or a governmental agency, or if such **Employee** gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act;
  3. the disclosure or threat of disclosure by an **Employee** of the **Public Entity** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;

4. an **Employee** assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or
  5. any strike of any **Employee** of the **Public Entity**
- Z. **Sexual Abuse and Molestation** means any actual, attempted or alleged criminal sexual conduct of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Abuse and Molestation** includes: sexual molestation, sexual assault, sexual exploitation or sexual injury. **Sexual Abuse and Molestation** does not include **Sexual Harassment**.
- AA. **Sexual Harassment** means any actual or alleged unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature, of a person by another person, or persons acting in concert, which causes physical and/or mental injuries. **Sexual Harassment** includes:
1. the above conduct when submission to or rejection of such conduct is made either explicitly or implicitly a condition of a person's employment, or a basis for employment decisions affecting a person; or
  2. the above conduct when such conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

**Sexual Harassment** does not include **Sexual Abuse and Molestation**.

BB. **Wrongful Act** means:

1. with regard to Insuring Agreements I.A.1 and 1.A.2, any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person** while acting in his or her capacity as such and on behalf of the **Public Entity**;
2. with regard to Insuring Agreements I.B., any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty by the **Public Entity**; or
3. with regard to Insuring Agreement I.C:
  - a. solely with respect to **Claims** brought and maintained by or on behalf of any **Employee** or applicant for employment with the **Public Entity**, **Wrongful Act** means a **Wrongful Employment Practice** committed or attempted by the **Public Entity** or by any **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**; or
  - b. with respect to all other **Claims**, **Wrongful Act** means only, or a violation of discrimination laws, including but not limited to, violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or a violation of a natural person's civil rights relating to such discrimination or **Sexual Harassment**, in either case, whether direct, indirect, intentional or unintentional, committed by an **Insured Person** in his or her capacity as such and on behalf of the **Public Entity**.

CC. **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination, whether actual or constructive;
2. employment-related misrepresentation;
3. any violation of employment discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, or military status;
4. **Sexual Harassment** or unlawful workplace harassment;



5. wrongful deprivation of a career opportunity or wrongful demotion;
6. failure to employ or promote;
7. wrongful discipline;
8. **Retaliation**;
9. negligent evaluation;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an **Employee** reference;
11. failure to grant tenure; and
12. with respect to paragraphs S.1 through S.11 above, inclusive, negligent hiring, retention, training or supervision; infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

of any past, present or prospective full-time, part-time, seasonal and temporary **Employee** or volunteer or leased **Employee(s)** or applicant for employment of the **Public Entity**.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

#### IV. EXCLUSIONS

Except as limited under Insuring Agreement I.D, **Public Entity** Crisis Management Coverage, the **Insurer** shall not be liable for **Damages** or **Claims Expenses** on account of any **Claim**:

- A. alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law by an **Insured** ("**Excluded Conduct**"); however, this exclusion shall not apply: (1) unless and until there is an adverse admission by, finding of fact, or final adjudication against any **Insured** as to such **Excluded Conduct**, at which time the **Insured** shall reimburse the **Insurer** for all **Damages** and **Claims Expenses** paid or incurred on account of such **Claim**; or (2) to any **Claim** alleging any **Wrongful Employment Practice**.
- B. alleging, based upon, arising out of or attributable to the gaining in fact of any profit, remuneration or advantage to which any **Insured** was not legally entitled; however, this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**.
- C. seeking relief or redress in any form other than monetary damages, or **Claims Expenses** for a **Claim** seeking injunctive or other non-monetary relief. However, the **Insurer** shall defend such a **Claim** in accordance with Section II, Defense, subject to a **Policy Period** aggregate limit of liability of \$100,000. This limit shall be part of the Limit of Liability stated in Item 3 of the Declarations.
- D. alleging, based upon, arising out of or attributable to any:
  1. **Bodily Injury**, other than **Mental Distress** arising out of a **Wrongful Employment Practice**;
  2. **Property Damage**;
  3. **Personal Injury**, other than libel, slander or defamation in any form arising out of a **Wrongful Employment Practice**; or
  4. any allegation relating to the foregoing D.1, D.2 and D.3 that an **Insured** negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such **Damages**, **Claims Expenses** or **Claim**.
- E. alleging, based upon, arising out of or attributable to the operation of the laws, and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use.

- F. alleging, based upon, arising out of or attributable to strikes, riots or civil commotions;
- G. alleging, based upon, arising out of or attributable to the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption. However, this exclusion shall not apply to **Claims Expenses**.
- H. alleging, based upon, arising out of or attributable to:
1. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- I. alleging, based upon, arising out of or attributable to the planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste storage or disposal site or any other nuclear facility; the transportation of nuclear material; or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause.
- J. brought by or on behalf of any **Insured**; provided, however, with respect to any **Claim** alleging any **Wrongful Employment Practice**, this exclusion shall only apply to cross-claims or counter-claims brought by one **Insured** against another **Insured**.
- K. alleging, based upon, arising out of or attributable to:
1. breach of any express, implied, actual or constructive contract, warranty, guarantee or promise, However, this subsection of this exclusion shall not apply to any **Claim** alleging any **Wrongful Employment Practice**; or
  2. any construction, architectural or engineering contracts and/or agreements or the actual or alleged liability assumed by the **Insured** under any express, implied, actual or constructive contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement.
- L. alleging, based upon, arising out of or attributable to any misappropriation of any trade secret or infringement of patent, collective mark, certification mark, registered mark, service mark, trademark, trade dress, trade name, domain, title, slogan, copyright or service name.
- M. alleging, based upon, arising out of or attributable to the operation of or activities of any schools, hospitals, clinics, nursing homes or other health care operations, jails or detention facilities, law enforcement agencies or fire fighting authorities.
- N. alleging, based upon, arising out of or attributable to the rendering or failure to render:
1. medical services, including **Incidental Medical Malpractice**, or
  2. professional services provided by any lawyer, architect, engineer or accountant to any person or entity other than the **Public Entity**.
- O. alleging, based upon, arising out of or attributable to any **Insured's** activities as a trustee or fiduciary as respects any type of **Employee** benefit plan, including any pension, savings, or profit sharing plan or to any amounts or benefits due under any fringe benefit program, retirement program, incentive program, perquisite program, entitlement program or other benefits owed to any **Employee**, including, but not limited to any actual or alleged violation of the responsibilities, obligations or duties imposed by the **Employee Retirement Income Security Act of 1974**, any similar state or local laws, and any rules and regulations promulgated thereunder and amendments thereto.



- P. alleging, based upon, arising out of or attributable to the improper administration or collection of taxes, or loss that reflects any tax obligations.
- Q. alleging, based upon, arising out of or attributable to:
1. any prior or pending litigation or administrative or regulatory proceeding, or any U.S. Equal Employment Opportunity Commission or similar state, local or foreign agency proceeding or investigation, filed on or before the effective date of the first policy issued and continuously renewed by the **Insurer**, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
  2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**.
- R. alleging, based upon, arising out of, or attributable to:
1. any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**.
- S. alleging, based upon, arising out of or attributable to any **Wrongful Act** prior to the inception date of the first policy issued by the **Insurer** or any affiliate thereof, and continuously renewed and maintained, if, on or before such date, any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim**.
- T. solely with respect to any **Claim** arising out of a **Wrongful Employment Practice**:
1. alleging, based upon, arising out of or attributable to any violation of the responsibilities, obligations or duties imposed by any worker's compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
  2. for an actual or alleged violation of: (1) the **Employee Retirement Income Security Act** of 1974 (except section 510 thereof); (2) the **Fair Labor Standards Act** (except the **Equal Pay Act**), (3) the **National Labor Relations Act**, (4) the **Worker Adjustment and Retraining Notification Act**, (5) the **Consolidated Omnibus Budget Reconciliation Act**, (6) the **Occupational Safety and Health Act**; or any similar federal, state or local laws, and any rules and regulations promulgated thereunder and amendments thereto anywhere in the world. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**;
  3. alleging, based upon, arising out of or attributable to any costs or liability incurred by any **Insured** to provide any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the **Americans With Disabilities Act** of 1992, as amended, or any similar federal, state or local law, regulation or ordinance, including the modification of any building, property or facility to make it more accessible or accommodating to any disabled person; or
  4. alleging, based upon, arising out of, or attributable to improper payroll deductions or any **Claims** for unpaid wages or overtime pay for hours actually worked or labor actually performed by any **Employee** of a **Public Entity**, or any violation of any federal state, local or foreign statutory law or common law that governs the same topic or subject, and any rules, regulations and amendments thereto. However, this exclusion shall not apply to that part of any **Claim** for **Retaliation**.

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for the purpose of determining the applicability of Exclusions IV.A. and IV.B. above.

## V. CRISIS MANAGEMENT COVERAGE PROVISIONS

- A. There shall be no Retention applicable to **Crisis Management Expenses** and the **Company** shall pay such **Crisis Management Expenses** from the first dollar subject to all other terms and conditions of this policy, including the **Policy** limit.
- B. An actual or anticipated **Crisis Event** shall be reported to the **Company** as soon as practicable, but in no event later than thirty (30) days after the **Public Entity** first incurs **Crisis Management Expenses** for which coverage will be requested under this **Policy**.

## VI. ESTATES, LEGAL REPRESENTATIVES AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of **Insureds** shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or legally recognized domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from a natural person **Insured** to the spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or legally recognized domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Damages** and **Claims Expenses** incurred by **Insureds** shown in Item 4 of the Declarations, shall also apply to **Damages** and **Claims Expenses** incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

## VII. EXTENDED REPORTING PERIODS

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Public Entity** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Public Entity** shall have the right, upon payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

### A. Automatic Extended Reporting Period

The **Public Entity** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Public Entity**.

### B. Optional Extended Reporting Period

The **Public Entity** shall have the right, upon payment of the additional premium set forth in Item 7A of the Declarations, to an Optional **Extended Reporting Period**, for the period set forth in Item 7B of the Declarations following the effective date of such cancellation or nonrenewal, but only for **Claims** first made during such Optional **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Public Entity** to the **Insurer**, and the **Insurer** receives payment of the additional premium, within 30 days following the effective date of termination or nonrenewal.

The first 60 days of the Optional **Extended Reporting Period**, if it becomes effective, shall run concurrently with the Automatic **Extended Reporting Period**.

- C. The **Insurer** shall give the **Public Entity** notice of the premium due for the **Extended Reporting Period** as soon as practicable following the date the **Public Entity** gives such notice of such election, and such



premium shall be paid by the **Public Entity** to the **Insurer** within 10 days following the date of such notice by the **Insurer** of the premium due. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

- D. The **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.
- E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional **Extended Reporting Period**.

## VIII. LIMITS OF LIABILITY

### A. Payment of **Claims Expenses** without reduction of the Limit of Liability

- 1. The **Insurer** shall pay **Claims Expenses** in excess of the applicable Retention and up to an aggregate amount equal to the Limit of Liability stated in Item 3 of the Declaration without reduction of the applicable Limit of Liability. The total amount of such **Claims Expense** payments by the **Insurer** shall be capped at the amount of the Limit of Liability, and is not on a per **Claim** basis.
- 2. Once the **Insurer** has paid the amount set forth in Item 3. of the Declarations in aggregate **Claims Expenses** arising from or relating to any and all matters, all further payments by the **Insurer** of **Claims Expenses** shall reduce the applicable Limit of Liability.

### B. Limit of Liability

- 1. Except as otherwise stated in section VIII.A, the **Insurer's** maximum liability for the sum of all **Damages** and all **Claims Expenses** because of all **Claims**, (including all **Claims** alleging any **Interrelated Wrongful Acts**) first made and reported during the **Policy Period** shall never exceed the amount stated in Item 3 of the Declarations.
- 2. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Damages** and all **Claims Expenses** resulting from a single **Claim** shall be deemed a single **Damage** and **Claims Expense** and shall be allocable to the policy in effect on the date the **Claim** is first made, regardless of whether such date is before or during the **Policy Period**.
- 3. Except as otherwise stated in section VIII.A, any payment of **Damages** and/or **Claims Expenses** by the **Insurer** will reduce the Limit of Liability stated in Item 3 of the Declarations.
- 4. The **Insurer** is entitled to pay **Damages** and **Claims Expenses** as they become due and payable by the **Insureds**, without consideration of other future payment obligations.
- 5. Once the Limit of Liability has been exhausted by payments of any **Damages** (regardless of whether the payment by the **Insurer** of **Claims Expenses** under section VIII.A. has exhausted, reached or exceeded the amount set forth in Item 3 of the Declarations), the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished.
- 6. The **Crisis Management Fund** is the **Insurer's** maximum liability for all **Crisis Management Expenses** arising from any and all **Crisis Events** occurring during the **Policy Period**. This limit shall be the **Insurer's** maximum liability under this policy regardless of the number of **Crisis Events** reported during the **Policy Period**. The **Insurer's** obligation to pay **Crisis Management Expense** terminates and ends upon the exhaustion of the **Crisis Management Fund**. The **Crisis Management Fund** shall be in addition to the aggregate Limit of Liability set forth in Item 3 of the Declarations.



## IX. RETENTION

- A. The liability of the **Insurer** shall apply only to that part of **Damages** and **Claims Expenses** which are in excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Public Entity** and at the risk of all **Insureds**.
- B. A single Retention amount shall apply to **Damages** and **Claims Expenses** arising from all **Claims** alleging **Interrelated Wrongful Acts**.
- C. If different parts of a single **Claim** are subject to different Retentions, the applicable Retention shall be applied separately to each part of the **Damages** and **Claims Expenses**, but the sum of such Retentions shall not exceed the largest applicable Retention.

## X. NOTICE

For coverage under this **Policy** (other than coverage for a **Crisis Event**):

- A. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** as soon as practicable, but in no event later than 30 days after: (1) the end of the **Policy Period**, or (2) with respect to **Claims** first made during any applicable Automatic or Optional **Extended Reporting Period**, the end of such Automatic or Optional **Extended Reporting Period**.
- B. If, during the **Policy Period**, any **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period** of:
  - 1. the identity of the potential claimants;
  - 2. a description of the anticipated **Wrongful Act** allegations;
  - 3. the identity of the **Insureds** allegedly involved;
  - 4. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - 5. the consequences which have resulted or may result; and
  - 6. the nature of the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Public Entity** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address set forth in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address set forth in Item 5B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.

## XI. PRESUMPTIVE INDEMNIFICATION

- A. The **Public Entity** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The **Public Entity** further agrees to advance **Defense Costs** actually and reasonably incurred by any **Insured Person** in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the **Insured Person** to indemnification, where permitted by law to do so. The financial ability of any **Insured Person** to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of **Claims Expenses** herein is a contractual right. The agreements contained in this paragraph are binding upon the **Public Entity** and enforceable by the **Insurer** or the **Insured Persons**.
- B. Notwithstanding anything in this section to the contrary, the **Public Entity's** indemnification obligations under this section shall not apply in the event the **Public Entity** is neither permitted nor required to grant such indemnification either because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Public Entity**, or because of the **Public Entity** becoming a debtor-in-possession.

## XII. OTHER INSURANCE

If any **Damages** or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages** or **Claims Expenses**, subject to its terms and conditions, only to the extent that the amount of such **Damages** or **Claims Expenses** are in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

## XIII. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:
1. are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
  2. shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**.
- B. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.
- C. It is understood and agreed that if such representations or such information are not true, accurate and complete, this **Policy** shall be null and void in its entirety and the **Insurer** shall have no liability hereunder as to: (1) any **Insured Person** who knew the facts misrepresented or omitted, whether or not such **Insured Person** knew of the **Application** or this **Policy**; and (2) the **Public Entity**. For purposes of this subsection C, the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**.

## XIV. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Public Entity** to the **Insurer**;
  2. 60 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer**;
  3. 10 days after receipt by the **Public Entity** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;



4. upon expiration of the **Policy Period** as set forth in Item 2 of the Declarations; or
  5. at such other time as may be agreed upon by the **Insurer** and the **Public Entity**.
- B. If the **Policy** is terminated by the **Public Entity**, or by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

#### **XV. TERRITORY AND VALUATION**

- A. All premiums, limits, retentions, **Damages**, **Claims Expenses** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Damages** and **Claims Expenses** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Damages** or **Claims Expenses** is due, respectively or if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made or **Damages** or **Claims Expenses** sustained anywhere in the world, provided the **Claim** is made within the jurisdiction of and subject to the laws of the United States of America, Canada or their respective territories or possessions.

#### **XVI. SUBROGATION**

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

#### **XVII. ACTION AGAINST THE INSURER AND BANKRUPTCY**

Except as set forth below in Section XX, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**.

#### **XVIII. AUTHORIZATION CLAUSE**

By the acceptance of this **Policy**, the **Public Entity** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim**, the giving or receiving of notice of termination or non renewal, the payment of premiums and the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Public Entity** shall so act on their behalf.

#### **XIX. ALTERATION, ASSIGNMENT AND HEADINGS**

- A. Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this **Policy** nor prevent the **Insurer** from asserting any right under the terms of this **Policy**.

- B. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.
- C. The titles and headings to the various parts, sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

## XX. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("ADR") process set forth in this section.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process:

- A. non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or
- B. arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals.

In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs.

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Public Entity**. The **Public Entity** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.

## XXI. INTERPRETATION

The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Insurer** and without reference to the reasonable expectations of either the **Insureds** or the **Insurer**.






General Insurance • 750 Delaware Ave., Delmar, N.Y. 12054 • 518-439-9958

July 28, 2023

To: Catherine M. Hedgeman, Esq.

From: Greg Turner 

Re: Public Officials Liability for Bethlehem IDA

Kate,

Please find attached a number of proposals for stand alone Public Officials Liability insurance for the IDA. A review of the recap will indicate that I have obtained quotes for primary coverage from Chubb (ACE American Insurance Company) at limits of \$1M and \$2M and from Professional Governmental Underwriters, LLC at limits of \$1M, \$2M and \$3M. PGU coverage is written through a member of the AXA Group of Companies.

There is also a quote for Excess Liability in the amount of \$7M. This policy requires an underlying primary limit of \$3M. I have asked the underwriter if the company would consider attaching at a \$2M limit. If they will it would allow you to opt for Chubb as the primary carrier. The highest limit Chubb will offer on the primary coverage is \$2M. I used a limit of \$7M on the Excess quote to match the aggregate limits you are currently provided by the Town's policies. Lower limits of Excess Liability are available.

I have attached specimen copies of the policy forms for all three companies for your review. Please contact me with any questions, need further information or would like additional limits to consider.

Thank you for the opportunity to supply this information.



# BURT ANTHONY ASSOCIATES

General Insurance • 750 Delaware Ave., Delmar, N.Y. 12054 • 518-439-9958

## PUBLIC OFFICIALS LIABILITY

### PROPOSAL

BETHLEHEM INDUSTRIAL DEVELOPMENT AUTHORITY

07/28/2023

COMPANY	LIMITS OF LIABILITY EACH CLAIM/ AGGREGATE	DEDUCTIBLE or SIR	PREMIUM
Chubb	\$1,000,000	\$10,000	\$5,053
	\$2,000,000	\$10,000	\$6,303
Professional	\$1,000,000	\$5,000	\$2,000
Governmental	\$2,000,000	\$5,000	\$3,500
Underwriters, LLC	\$3,000,000	\$5,000	\$5,000

## EXCESS LIABILITY

		Underlying Required	
Kinsale Insurance Co.	\$7,000,000	\$3,000,000	\$10,500

## NOTATIONS

- All primary coverage proposals are written on a Claims Made form with full Prior Acts. The Excess Liability, if purchased, would specify the inception date to be Retro Date.
- Chubb has a Best Rating of A+ and is an Admitted Insurer
- Professional Governmental Underwriters coverage is underwritten by Greenwich Ins. Co. a member of the AXA XL Group of Companies, Best Rating A+ and is an Admitted Insurer
- Kinsale Ins. Co. has a Best rating of A Excellent and is a Non-Admitted carrier



Insurance quote presented to:

AmWINS Insurance Brokerage, LLC - Farmington, CT

Mark Schmiegel

For

Bethlehem IDA

Proposed policy period

12 Month(s) - Effective Date TBD

07/06/2023

**NO FLAT CANCELLATIONS ONCE COVERAGE IS BOUND**

Kinsale Insurance Company P.O. Box 17008 Richmond, VA 23226  
Phone (804) 289-1300 Fax (804) 673-5697  
[www.kinsaleins.com](http://www.kinsaleins.com)



# Kinsale Insurance Company

A.M. Best Company Rating: A (Excellent)  
Financial Size Category: X

AmWINS Insurance Brokerage, LLC - Farmington, CT - Mark Schmiegel

## QUOTE

RE: Bethlehem IDA  
445 Delaware Ave  
Delmar, NY 12054

Submission #:04070693  
Quote Letter #:14273692  
Quote Date:07/06/2023

We are pleased to offer the following quote. This quote is valid until 08/05/2023 unless extended and agreed to in writing by us. Please read carefully as the terms and conditions of coverage may differ from those requested. **THIS IS NOT A BINDER OF INSURANCE.**

**Company:** Kinsale Insurance Company  
**Coverage Form:** Excess Casualty - Claims Made

**Policy Term:** 12 Month(s) - Effective Date TBD  
**Retro Date:** Inception

### Limits of Liability:

\$7,000,000 Each Occurrence  
\$7,000,000 Annual Aggregate

### Business Description:

### Schedule of Underlying Insurance:

#### Public Officials Liability

Carrier:	Greenwich Insurance Company	Each Claim	\$3,000,000
Policy Term:	TBD	General Aggregate	\$3,000,000
Coverage Form:	Claims Made (Retro Date: Full Prior Acts)		

Premium:	\$10,500	Minimum Earned Premium:	25.00%
Terrorism Premium	\$525		
(Optional):			
<b>Total Premium:</b>	<b>\$10,500</b>		
<b>Company Fees:</b>	<b>\$50</b>		
<b>Total Amount Due:</b>	<b>\$10,550</b>		

Premium is 100.00% minimum and deposit.  
Company Fees, if applicable, are fully earned.  
Taxes, fees and surcharges are the responsibility of the broker

This quote is subject to the specified conditions and may be withdrawn at any time prior to acceptance and in no event will it remain open beyond the quote expiration date unless extended by us in writing. Changes in classifications, operations, exposure or risk specific information require notification to us and may result in changes to this quote. Coverage may not be bound without written confirmation from us.  
**Once bound, coverage may not be cancelled flat and the minimum earned premium will apply.**

**Contingencies:**

This Quote is subject to our receipt and acceptance of the following items:

- 1) Currently valued 5 year loss runs (valued within 30 days of the effective date) of the town's policy they are currently on
- 2) Complete copies of all underlying policies within 60 days of binding coverage.
- 3) Currently signed and dated version of the PGU submitted application (within 30 day period prior to effective date).
- 4) Copy of any subjectivity materials requested by the primary carrier.
- 5) Copy of the Applicant's current operating budget for the next 12 months.
- 6) Copy of primary binder

Contingency items must be submitted to a Kinsale Underwriter for favorable review prior to a bind request to confirm this quote remains valid. Quote subject to revision or withdrawal pending final review.

**Comments:****Exclusions and Endorsements:**

PEX1000-1021 - Excess Liability Declarations

ADF9013-0323 - Notice - Where To Report A Claim

ADF4001-0110 - Schedule of Forms

PEX1001-0323 - Schedule of Underlying Insurance (Sitting Over Public Officials and Employment Practices Liability)

PEX0001-1021 - Excess Follow Form Liability Insurance Policy

PEX2000-0622 - Limitation of Coverage to Specified Coverage Section of Followed Policy

PEX2002-0323 - Retroactive Date Endorsement (Inception date of this policy)

ADF4003-0110 - New York Amendatory Endorsement - Notice Provisions

ADF3002-0110 - Exclusion - Terrorism

PEX3000-0323 - Exclusion - Prior or Pending Litigation (Inception date of this policy)

PEX3001-1021 - Exclusion - Pathogen and Related Hazards

PEX3004-1021 - Exclusion - ERISA

PEX3005-1021 - Exclusion - Class Action

PEX3006-1021 - Exclusion - Cyber-Attack

ADF9005-0321 - Notice-Offer of Terrorism Coverage and Disclosure of Premium

IL1201-1185 - Policy Changes (Sexual Abuse and Molestation Exclusion Exact Wording TBD)

IL1201-1185 - Policy Changes (Exclusion - Land Use Planning and Zoning Exact Wording TBD)

ADF9004-0110 - Signature Endorsement

ADF9009-0110 - U.S. Treasury Department's Office of Foreign Assets Control (OFAC) Advisory Notice to Policyholders



**EXCESS LIABILITY DECLARATIONS**

Policy Number:

Producer Number:

Name and Address:

**NAMED INSURED:****MAILING ADDRESS:****POLICY PERIOD:** FROM TO at 12:01 AM at the address of the named insured as shown above.**RETROACTIVE DATE**

Retroactive Date: at 12:01 AM at the address of the named insured as shown above.

This Policy follows the retroactive date provisions in the Followed Policy, except that the actual Retroactive Date with respect to this Policy shall be the date indicated above.

**UNDERLYING LIMIT**

Each Claim Limit

Aggregate Limit

**LIMITS OF INSURANCE**

Each Claim Limit

Aggregate Limit

**PREMIUM AND COMPANY FEES****PREMIUM:****COMPANY FEE:****TOTAL (OF PREMIUM AND COMPANY FEE):****ENDORSEMENTS**

Refer to ADF4001, SCHEDULE OF FORMS



## **NOTICE – WHERE TO REPORT A CLAIM**

It is important that losses, claims, or incidents (if incident reporting is permitted under the Policy) are reported in writing and directly to the Claims Department at Kinsale Insurance Company. Reporting losses, claims, or incidents to an insurance agent or broker is not notice to the Kinsale Insurance Company Claims Department. Failure to report directly to Kinsale Insurance Company's Claims Department may jeopardize coverage under the Policy. The Claims Department can be contacted easily and quickly by e-mail, fax, or U.S. mail.

**By E-mail:**

Newclaimnotices@kinsaleins.com

**By FAX:**

1-804-482-2762, Attention Claims Department

or

**By Mail:**

Claims Department  
Kinsale Insurance Company  
P. O. Box 17008  
Richmond, Virginia 23226

**Street Address:**

Claims Department  
Kinsale Insurance Company  
2035 Maywill Street, Suite 100  
Richmond, Virginia 23230

## SCHEDULE OF FORMS

<i>Attached To and Forming Part of Policy</i>	<i>Effective Date of Endorsement</i> 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i>
<i>Additional Premium:</i>		<i>Return Premium:</i>

## SCHEDULE OF UNDERLYING INSURANCE

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

<b>FOLLOWED POLICY: Refer to Endorsement PEX2000</b>			
<b>Policy Type: Limited to the Specified Coverage Section named below:</b>			
Specified Coverage Section:		Limits of Insurance:	
Issuing Company:		Each Claim:	
Policy Number:		Aggregate:	
Policy Dates:			
Retroactive Date:			
	(claims-made policy only)		

<b>FOLLOWED POLICY:</b>			
<b>Policy Type: Law Enforcement Professional Liability</b>			
Issuing Company:		Limits of Insurance:	
Policy Number:		Each Claim:	
Policy Dates:		Aggregate:	
Retroactive Dates:			
	(claims-made only policy)		

<b>FOLLOWED POLICY:</b>			
<b>Policy Type: Educational Institution Legal Liability</b>			
Issuing Company:		Limits of Insurance:	
Policy Number:		Each Claim:	
Policy Dates:		Aggregate:	
Retroactive Dates:			
	(claims-made policy only)		

<b>FOLLOWED POLICY:</b>			
<b>Policy Type: Public Officials Liability</b>			
Issuing Company:		Limits of Insurance:	
Policy Number:		Each Claim:	
Policy Dates:		Aggregate:	
Retroactive Date:			
	(claims-made policy only)		

<b>FOLLOWED POLICY:</b>			
<b>Policy Type: Public Officials Liability and Employment Practices Liability</b>			
Issuing Company:		Limits of Insurance:	
Policy Number:		Each Claim:	
Policy Dates:		Aggregate:	
Retroactive Date:			

	(claims-made policy only)		
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OTHER UNDERLYING INSURANCE:			
Issuing Company:		Limits of Insurance:	
Policy Number:		Each Claim:	
Policy Dates:		Aggregate:	
Retroactive Dates:			



## EXCESS FOLLOW FORM LIABILITY INSURANCE POLICY

Throughout this Policy, the words "we" and "us" refer to the Company shown in the Declarations. Other words and phrases that appear in quotation marks have special meanings. Refer to **SECTION III - DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to us and to the Underlying Insurer(s), we agree with the Named Insured as follows:

### SECTION I - INSURING AGREEMENT

Except as otherwise stated in this Policy, this excess Policy will conform to the terms and conditions set forth in the "followed policy" at its inception. However, if the terms or conditions of any other "underlying insurance" are more restrictive than those in the "followed policy", this Policy shall follow the more restrictive terms or conditions of the "underlying insurance". This Policy will not under any circumstance provide broader coverage than provided by the "underlying insurance". In the event of any conflict between this Policy and any "underlying insurance", the terms and conditions of this Policy shall control.

### SECTION II - UNDERLYING INSURANCE

- A. It is a condition of this Policy that all "underlying insurance" in force as of the inception date of this Policy shall be maintained in full effect during the currency of this Policy except for any reduction of the aggregate limit of such "underlying insurance", subject to **SECTION IV** of this Policy. Failure to maintain all "underlying insurance" shall not invalidate this Policy, but in the event of such failure, we shall be liable under this Policy only to the extent that we would have been liable had the insured complied with this requirement.
- B. The Company's obligations under this Policy shall not be increased, expanded or otherwise changed as a result of the "financial insolvency" of any insurer providing any "underlying insurance". This Policy shall apply (and amounts payable under this Policy shall be determined) as if such "underlying insurance" were available and collectible.
- C. If we pay expenses in defense of a claim under this Policy, such payments will reduce the Limits of Insurance of this Policy.
- D. In the event of reduction or exhaustion of the "underlying insurance" by reason of payment of loss, including if applicable, actual payments by the Underlying Insurer(s) of any costs or expenses incurred in the investigation or defense of any claim, this Policy shall:
  - 1. In the event of reduction, pay excess of the reduced limit; and
  - 2. In the event of exhaustion of the "underlying insurance", continue in force as primary insurance; provided, however, that in the case of exhaustion, this Policy shall only pay excess of the retention or deductible applicable to the "followed policy", which shall be applied to any subsequent loss in the same manner as specified in the "followed policy".

### SECTION III - DEFINITIONS

- A. "Followed policy" means the policy scheduled as such in the Schedule of Underlying Insurance.
- B. "Limit of Insurance" means the amount set forth as such in the Declarations.
- C. "Policy period" means the period set forth as such in the Declarations.
- D. "Underlying insurance" means the "followed policy" and all underlying excess policies scheduled in the Schedule of Underlying Insurance.
- E. "Underlying limit" means the amount set forth as such in the Declarations and is equal to the aggregate of all limits of insurance of all "underlying insurance", plus any self-insured retention or deductible applicable to the "followed policy".



- F. "Sublimit" means any limits of insurance that are lower than each claim or the aggregate limits of insurance shown for that particular "underlying insurance" policy(ies).
- G. "Financial insolvency" shall mean any entity becoming a debtor in possession, or the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate such entity.

#### **SECTION IV - LIMITATIONS**

- A. The "Limit of Insurance" is the maximum amount we will pay in excess of the full "underlying limit" for the "policy period", including any extended reporting periods, if applicable.
- B. If any "underlying insurance" is subject to a "sublimit", coverage under this Policy:
  - 1. Does not drop down over any such "sublimit"; and
  - 2. Shall not apply to any claim that is subject to such "sublimit", except to recognize the reduction of the "underlying insurance" to the extent of any payment subject to the "sublimit".
- C. The Company shall be liable only after the total applicable limits of insurance of "underlying insurance" have been exhausted, including any applicable self-insured retention or deductible, and solely as a result of the actual payment of claims for loss by the Underlying Insurer(s), including if applicable, actual payments by the Underlying Insurer(s) of any costs or expenses incurred in the investigation or defense of any claim.

#### **SECTION V - CONDITIONS**

- A. The Named Insured shall provide prompt written notice to us if the limits of insurance of any "underlying insurance" are amended, supplemented, terminated, or cancelled, or if any provider of "underlying insurance" becomes financially unable to pay its portion of the "underlying insurance". No such event shall terminate coverage under this Policy without notice from us. The Named Insured's failure to comply with this section shall not invalidate coverage under this Policy, but in no event will we be responsible to pay any amount greater than we would have been obligated to pay had no such event occurred.
- B. If changes are made to the terms or conditions of the "followed policy" or "underlying insurance" subsequent to the inception date of this Policy, as a condition precedent to the coverage and other protections afforded by this Policy, the Named Insured must provide specific written notice to the Company of such changes to the "followed policy" or "underlying insurance" and secure the Company's affirmative consent to such changes prior to the effective date of such changes. Should any such change to this Policy be approved by us, then the premium for this Policy may be adjusted accordingly by endorsement to this Policy.
- C. The Insured shall give us such information, assistance and cooperation as we may reasonably request and shall do nothing without the advance written consent of the Company which may prejudice the Company's position or potential rights of recovery.

#### **SECTION VI - EXCESS CLAIMS REPORTING**

- A. The Insured shall, as a condition precedent to their rights under this Policy, provide us with written notice of any claim in the same manner required by the terms and conditions of the "followed policy". Notice provided to any Insurer of the "underlying insurance" shall not constitute notice to us.
- B. In the event the Insured provides to any Underlying Insurer notice of any facts or circumstances which could later form the basis of a claim against the "underlying insurance", the Insured shall, as a condition precedent to their rights under this Policy, simultaneously provide such notice to us.



- C. We shall have the right, at our sole option and without waiver of any Policy provision, to participate in the investigation, settlement or defense of all claims reported under this Policy.

#### **SECTION VII - NOTICE OF POLICY TERMINATION**

- A. The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.
- B. We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least ten (10) days before the effective date of cancellation if we cancel for non-payment of premium; or thirty (30) days before the effective date of cancellation if we cancel for any other reason.
- C. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice. Notice of cancellation will state the effective date of cancellation. The "policy period" will end on that date.
- D. If this Policy is cancelled, we will send the first Named Insured any refund due subject to a minimum earned premium of twenty-five percent (25%) of the combined sum of the total policy premium listed in this Policy's Declarations and any premium adjustments by endorsement. If we cancel for reasons other than non-payment of premium, the refund will be pro rata. If we cancel due to non-payment of premium or if the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

#### **SECTION VIII - EXTENDED REPORTING PERIOD**

When the "followed policy" is claims made, the Named Insured shall have the right to an Extended Reporting Period under this Policy as described in and subject to the terms and conditions of the "followed policy". The duration of the Extended Reporting Period under this Policy shall be the same as provided by the terms and conditions of the "followed policy". If additional premium is required for an Extended Reporting Period in the "followed policy", we will charge the same percentage of this Policy's annual premium as the percentage stated in the "followed policy" for calculating the "followed policy's" Extended Reporting Period premium.

An Extended Reporting Period endorsement for which we charge additional premium, shall not be issued under this Policy unless the Named Insured has:

1. Requested in writing that we issue an Extended Reporting Period for this Policy; and
2. Elected the Extended Reporting Period in all unexhausted "underlying insurance" and provided proof of such election to us; and
3. Paid the additional premium due to us for the Extended Reporting Period for this Policy.

#### **SECTION IX - SERVICE OF SUIT AND JURISDICTION**

In the event of the failure of the Company to pay any amount claimed to be due under this Policy, the Company will submit to the jurisdiction of any United States federal court of competent jurisdiction within the United States of America or any court of competent jurisdiction in Canada. In the event there is no United States federal court of competent jurisdiction, the Company will submit to the jurisdiction of any other court of competent jurisdiction within the United States of America. All matters arising under this Policy shall be determined in accordance with the choice of law rules of such court. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.



Service of process in any such suit may be made upon the President and Chief Executive Officer of the Company or his designee at the address shown in the Declarations of this Policy. In any suit instituted upon this contract and against the President and Chief Executive Officer of the Company or his designee, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal. The President and Chief Executive Officer of the Company or his designee are authorized and directed to accept service of process.

Pursuant to any statute of any state, territory or district of the United States of America, the Company designates the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary under this Policy arising out of this contract of insurance. The Company designates the above-named as the person to whom said officer is authorized to mail such process or a true copy of such process.

To the extent this Service of Suit and Jurisdiction provision conflicts with applicable state law, it is hereby amended to comply with said law but only to the extent necessary to bring it within the applicable law.

#### **SECTION X - BINDING ARBITRATION**

All disputes under this Policy shall be subject to binding arbitration as follows:

- a. All disputes over coverage or any rights afforded under this Policy, including whether an entity or person is a Named Insured, an insured, an additional insured or the effect of any applicable statutes or common law upon the contractual obligations owed, shall be submitted to binding arbitration, which shall be the sole and exclusive means to resolve the dispute. Either party may initiate the binding arbitration.

The arbitration forum and process shall be agreed to by the parties. In the event the parties cannot agree on an arbitration forum and process, the matter shall be submitted to the American Arbitration Association. The Arbitration shall be before a panel of three arbitrators, unless the parties agree to one arbitrator, all of whom shall have experience in insurance coverage of the type afforded by this Policy. If the parties select a panel of three arbitrators, each party shall select an arbitrator and the chosen arbitrators shall select a third arbitrator. The American Arbitration Association shall decide any disputes concerning the selection of the Arbitrators. The potential arbitrators from which the arbitrators shall be selected shall not be confined to those provided by the American Arbitration Association. Each party shall bear the costs of its arbitrator and shall share equally the costs of the third arbitrator and arbitration process. In the event of a single arbitrator, the cost shall be shared equally by the parties. The decision of the arbitration is final and binding on the parties.

- b. All disputes regarding payment(s) owed under this Policy for any deductible or premium, including but not limited to any audit premium, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with the AAA Expedited Procedures. This arbitration shall be the sole and exclusive means to resolve the dispute. Either party may initiate the binding arbitration.

Each party will provide relevant documents in support of its position. In order to eliminate undue burden and expense, there shall be no other discovery allowed. The arbitration will be based solely on the documents submitted by the parties and there shall be no in-person or oral hearing. The disputes shall be decided by a single arbitrator. The arbitrator's decision shall be accompanied by a reasoned opinion and shall be binding upon all parties. Any judgment or award rendered by the arbitrator may be entered in any court having jurisdiction to enforce such judgment or award. Each party shall bear its own costs and expenses and an equal share of the arbitrator's fee and any administrative fees associated with the arbitration.

Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### RETROACTIVE DATE ENDORSEMENT

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance provided under the following:

#### EXCESS LIABILITY COVERAGE

For any "underlying insurance" that is written on a claims made or claims made and reported basis, the following applies to the insurance provided by this Policy as excess over such "underlying insurance":

The RETROACTIVE DATE shown on the Declarations is amended as shown below.

#### SCHEDULE

Retroactive Date:	at 12:01 AM at the address of the Named Insured shown on the Declarations
This Policy follows the Retroactive Date provisions in the Followed Policy, except that the actual Retroactive Date with respect to this Policy shall be the date indicated in this Schedule. This Policy will only follow the Retroactive Date provisions in the Followed Policy to the extent that such provisions do not conflict with this endorsement, in which case the terms of this endorsement shall apply.	

**SECTION I – INSURING AGREEMENT** is amended by adding the following:

This insurance applies to damages arising out of related "wrongful acts" only if such related "wrongful acts" first took place on or subsequent to the Retroactive Date shown in the Schedule above and prior to the end of this policy period.

For the purposes of this insurance, all "wrongful acts" that are logically or causally connected by any common fact, circumstance, situation, transaction, event, service, advice or decision will be considered to be related "wrongful acts" and will be deemed to have taken place at the time the first of these related "wrongful acts" took place, regardless of the number of "wrongful acts" and even though the nature and extent of any resulting damages may be continuous, progressive, cumulative, changing or evolving. All claims based upon such related "wrongful acts" shall be deemed to constitute a single claim and be subject to a single "Limit of Insurance".

For the purposes of this endorsement, "wrongful act" means any actual or alleged negligent act, error or omission to which the "followed policy" applies.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LIMITATION OF COVERAGE TO SPECIFIED COVERAGE SECTION OF FOLLOWED POLICY

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance under the following:

### EXCESS LIABILITY COVERAGE

**SECTION III – DEFINITIONS**, item A. is deleted and replaced with the following:

- A. "Followed policy" means and is limited to the Specified Coverage Section of the policy shown in the Schedule of Underlying Insurance - Followed Policy.

This Policy is amended by adding the following exclusion:

This Policy does not apply to coverage under any coverage section, coverage part, or line of insurance of the policy shown in the Schedule of Underlying Insurance - Followed Policy other than the Specified Coverage Section of such policy as shown in the Schedule of Underlying Insurance - Followed Policy.

We will not recognize any reduction in the "underlying limit" because of payments made by Underlying Insurers for claims to which this Policy does not apply.

**SECTION IV – LIMITATIONS** is amended by adding the following:

It is the insured's sole responsibility to obtain and maintain other insurance or self-insurance for any impairment of the "underlying limit" resulting from the payment of any claim for loss not covered under this Policy.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**NEW YORK AMENDATORY ENDORSEMENT - NOTICE PROVISIONS**

<i>Attached To and Forming Part of Policy</i>	<i>Effective Date of Endorsement</i> 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i>
<i>Additional Premium:</i>		<i>Return Premium:</i>

**This endorsement modifies insurance provided under the following:**

**ALL COVERAGE FORMS**

With respect to policies delivered in New York State, the following provisions are added to this policy:

1. Failure to give notice to us as required under this policy shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.
2. With respect to "bodily injury" claims, provided that "bodily injury" is covered by this policy, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us provided the sole question is whether the denial of coverage or non admission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 (sixty) days after we deny coverage or do not admit liability:

- a. we bring or an insured brings an action to declare the rights of the parties under the policy; and
- b. we name or the insured names the injured person, someone acting for the injured person or other claimant as a party to the action.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

### **EXCLUSION - TERRORISM**

<i>Attached To and Forming Part of Policy</i>	<i>Effective Date of Endorsement</i> 12:01AM at the Named Insured address shown on the Declarations	<i>Named Insured</i>
<i>Additional Premium:</i>		<i>Return Premium:</i>

**This endorsement modifies insurance provided under the following:**

#### **ALL COVERAGE FORMS**

This insurance does not apply to any loss, injury, claim or damage arising directly or indirectly out of or relating to:

1. Any act of "terrorism"; or
2. Any action authorized by a government authority or agency for the purpose of preventing or minimizing the consequences of any act or threat of "terrorism".

"Terrorism" means an activity by an individual acting alone, or individuals acting as part of a group, that involves any violent act, including the threat of any activity or preparation for an activity that:

1. Causes either:
  - a. Damage to property;
  - b. Injury to person(s); or
  - c. Loss of income or increased expense; and
2. Appears to be intended to:
  - a. Intimidate or coerce a civilian population;
  - b. Disrupt any segment of an economy;
  - c. Influence the policy of a government by intimidation or coercion;
  - d. Affect the conduct of a government by destruction, assassination, kidnapping or hostage-taking; or
  - e. Advance a political, religious or ideological cause; or
3. Involves the use, release, dispersal, discharge, escape or application of:
  - a. Nuclear materials, or directly results in nuclear reaction or radiation or radioactive contamination; or
  - b. Pathogenic or poisonous biological or chemical materials.

"Terrorism" also includes any incident determined to be such by any official, department or agency that has been specifically authorized by federal statute to make such a determination.

**ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.**



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EXCLUSION - CLASS ACTION

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance under the following:

#### EXCESS LIABILITY COVERAGE

The following exclusion is added to this Policy:

##### CLASS ACTION

This insurance does not apply to any claim or suit brought, in whole or in part, as or within a "class action" proceeding. This exclusion applies to the entire claim or suit, regardless that any cause of action or allegation, or any portion thereof, included in such "class action" proceeding is brought solely as to an individual or group of individuals that is less than the entire purported class.

As used in this exclusion, "class action" means any civil action filed under Rule 23 of the Federal Rules of Civil Procedure, or similar state statute or rule of judicial procedure, authorizing an action to be brought on behalf of a class by one or more representative persons.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EXCLUSION - ERISA

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance provided under the following:

#### EXCESS LIABILITY COVERAGE

The following exclusion is added to this Policy:

##### ERISA

This insurance does not apply to any activities performed in a fiduciary capacity with respect to any pension, profit sharing, health and welfare, or any other employee benefit plan or trust sponsored, established, funded, or managed by any insured for its own employees, including any claim under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant the Employee Retirement Income Security Act of 1974.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EXCLUSION - PATHOGEN AND RELATED HAZARDS

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance under the following:

#### EXCESS LIABILITY COVERAGE

The following exclusion is added to this Policy:

#### PATHOGEN AND RELATED HAZARDS

This Policy does not apply to any claim, suit, wrongful act, damages, or defense costs, or any other injury or damage arising directly or indirectly out of, related to, or in any way involving the inhalation of, absorption of, ingestion of, contact with, exposure to, existence of, or presence of any form of "pathogen and related hazards".

This exclusion applies, but is not limited to the following:

- a. Providing or failing to provide any supervision, instructions, recommendations, warnings, or advice related to any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any form of "pathogen and related hazards";
- b. Failure to provide an environment safe from "pathogen or related hazards" or the actual, alleged or threatened transmission to others;
- c. The prevention or suppression, or failure to prevent or suppress "pathogen or related hazards" or the actual, alleged, or threatened transmission to others;
- d. The reporting or failure to report to the proper authorities;
- e. The negligent hiring, employment, training, supervision, or retention of any insured, employee, agent or other person with respect to a. through d. above; or
- f. Any loss, cost or expense arising out of, related to, or in any way involving any claim, request, or demand that any insured:
  - (1) Assess the presence, absence, amount, or effects of any "pathogen or related hazards"; or
  - (2) Identify, sample, test, monitor, clean up, remove, dispose of, or neutralize the effects of any "pathogen or related hazards" in any building, material, animal, or product; or
  - (3) Respond to any "pathogen or related hazards" in any manner other than as described in (1) or (2) above.

This exclusion applies regardless of whether any "pathogen or related hazards" is the initial precipitating cause or is in any way a cause of injury or damage and regardless of whether any other actual or alleged cause, event, material or product contributed concurrently, proximately, or in any sequence to such injury or damage, including whether any actual or alleged injury or damage arises out of a chain of events that includes "pathogen or related hazards".

As used in this exclusion, "pathogen and related hazards" includes, without limitation:

- a. Fungus, including but not limited to any type of mold or mildew;
- b. Any protist, including but not limited to algae and slime mold;
- c. Any chemical matter, or compound produced or released by a fungus or protist, including but not limited to



any mycotoxin, toxin, spore, scent, fragment, metabolites, or other by-product that is produced by a. or b. above;

- d. Any pathogen, including but not limited to virus, bacterium, prion, or protozoa or other microorganism;
- e. Any sexually transmitted disease, including but not limited to Acquired Immunodeficiency Syndrome or Human Immunodeficiency Virus, or exposure to another having the same, or to substances or materials contaminated with the same, or fear of contracting Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus, or any other communicable disease; or;
- f. Any other infectious or contagious disease transmissible by direct contact with an affected individual or the individual's discharges or by indirect means.

This exclusion does not apply to fungi or bacteria on, or contained in, a good or product intended for bodily consumption.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EXCLUSION - PRIOR OR PENDING LITIGATION

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance provided under the following:

#### EXCESS LIABILITY COVERAGE

For any "underlying insurance" that is written on a claims made or claims made and reported basis, the following applies to the insurance provided by this Policy as excess over such "underlying insurance":

SCHEDULE	
Prior or Pending Litigation Date	

This Policy is amended by adding the following exclusion:

#### Prior or Pending Litigation Date

This Policy does not apply to any claim, wrongful act, damages, or defense costs or any other injury or damage based upon, arising out of, or in any way involving:

- Any litigation, proceedings, demands, claims or administrative hearings against any insured occurring prior to or pending as of the Prior or Pending Litigation Date shown in the Schedule above;
- Any future litigation, proceedings, demands, claims or administrative hearings arising from, based upon or derived from substantially the same facts, or circumstances as alleged in a. above; or
- Any act, error or omission by any insured which gave rise to such prior or pending litigation, proceedings, demands, claims or administrative hearings.

We will not recognize any reduction in the "underlying limit" because of payments made by Underlying Insurers for claims to which this Policy does not apply.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION - CYBER-ATTACK

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance provided under the following:

### EXCESS LIABILITY COVERAGE

The following exclusion is added to this Policy:

#### CYBER ATTACK

This insurance does not apply to any claim based upon, arising out of or in any way involving any failure or violation of the security of an insured's computers or devices and related media, networks, data or systems including, but not limited to, any:

1. Impaired or denial of access;
2. Unauthorized access to or use of any computer system or device, network, data or related media including, but not limited to, any:
  - a. Access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, or any other type of nonpublic information;
  - b. Access to or manipulation of any federal, state, or municipal records of any kind; or
  - c. Access to or manipulation of any utility service, utility service machinery or equipment, 911 or any other emergency services dispatching or communications network, or any internet service;
3. "Cyber-attack"; or
4. Act or failure to act of any insured to prevent, detect, or mitigate 1. through 3. above.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described above. This exclusion applies regardless of fault or intent and regardless of the particular cause of action. This exclusion applies to any claim regardless of whether any other actual or alleged cause contributed to it concurrently, proximately, or in any sequence.

As used in this exclusion, "cyber-attack" means the transmission of fraudulent or unauthorized data that modifies or attempts to modify, alters, corrupts, damages, destroys, deletes, disrupts, records, transmits, encrypts, exploits, acquires, consumes or otherwise manipulates information within a computer, device, related media, data, or system without authorization, including data that is self-replicating or self-propagating, and which causes the disruption of the normal operation of a computer or device and related media, data, or system.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



## NOTICE-OFFER OF TERRORISM COVERAGE AND DISCLOSURE OF PREMIUM

You are hereby notified that under the federal Terrorism Risk Insurance Act, as amended ("the Act"), you have a right to purchase insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(1) of the Act: The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE. UNDER THE FORMULA, BEGINNING ON JANUARY 1, 2020, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 80% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.**

**YOU SHOULD ALSO KNOW THAT THE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT, AS WELL AS INSURERS' LIABILITY FOR LOSSES, RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.**

**COVERAGE FOR "INSURED LOSSES" AS DEFINED IN THE ACT IS SUBJECT TO THE COVERAGE TERMS, CONDITIONS, AMOUNTS AND LIMITS IN THIS POLICY APPLICABLE TO LOSSES ARISING FROM EVENTS OTHER THAN ACTS OF TERRORISM.**

**YOU SHOULD KNOW THAT UNDER FEDERAL LAW, YOU ARE NOT REQUIRED TO PURCHASE COVERAGE FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM.**  
The Act provides that a separate premium is to be charged for insurance for an "act of terrorism" covered by the Act.

### REJECTION OR SELECTION OF TERRORISM INSURANCE COVERAGE

If you choose not to purchase coverage for certified acts of terrorism, you must check the Terrorism Coverage Rejection box below and sign and date in the space provided.

If you choose to purchase coverage for certified acts of terrorism, you must check the Terrorism Coverage Selection box below, sign and date in the space provided and remit the quoted premium amount indicated below.

<input type="checkbox"/>	<b>TERRORISM COVERAGE REJECTION</b> I hereby acknowledge that I have been notified of my right to purchase coverage for certified acts of terrorism and that I voluntarily elect not to purchase such coverage. I understand that I will have no coverage for losses arising from acts of terrorism as defined above.
<input type="checkbox"/>	<b>TERRORISM COVERAGE SELECTION</b> I hereby elect to purchase coverage for certified acts of terrorism for a premium of \$_____

**Note: If you do not pay the premium as noted above, you will not have Terrorism Coverage under this policy, as defined in the Act. Failure to sign this form will neither grant nor invalidate coverage.**

\_\_\_\_\_  
Applicant's Name

\_\_\_\_\_  
Insurance Company

\_\_\_\_\_  
Authorized Signature


\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Policy Number/Effective Date


THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**POLICY CHANGES**

POLICY NUMBER	POLICY CHANGES EFFECTIVE	COMPANY  KINSALE INSURANCE COMPANY
NAMED INSURED		AUTHORIZED REPRESENTATIVE    President
COVERAGE PARTS AFFECTED		
CHANGES		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### POLICY CHANGES

POLICY NUMBER	POLICY CHANGES EFFECTIVE	COMPANY  KINSALE INSURANCE COMPANY
NAMED INSURED		AUTHORIZED REPRESENTATIVE   President
COVERAGE PARTS AFFECTED		
CHANGES		



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

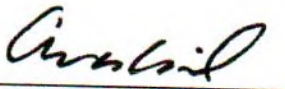
### SIGNATURE ENDORSEMENT

Attached To and Forming Part of Policy	Effective Date of Endorsement 12:01AM at the Named Insured address shown on the Declarations	Named Insured
Additional Premium:		Return Premium:

This endorsement modifies insurance provided under the following:

#### ALL COVERAGE FORMS

By signing and delivering this policy to you, we state that it is a valid contract when signed as below by our authorized representatives.



Secretary



President

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

## **U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL (OFAC)**

### **ADVISORY NOTICE TO POLICYHOLDERS**

This Notice shall not be construed as part of your policy and no coverage is provided by this Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages your policy provides.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. Please read this Notice carefully.

The Office of Foreign Assets Control administers and enforces sanctions policy, based on Presidential declarations of national emergency. OFAC has identified and listed numerous Foreign Agents, Front Organizations, Terrorists, Terrorist organizations and Narcotics traffickers as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site—<http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a "Specially Designated National and Blocked Person", as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments and no premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.





## **Professional Governmental Underwriters, LLC**

***The Authority.***

Professional Governmental Underwriters, Inc. is a full-service risk management company dedicated to assisting public, educational and non-profit entities in the management of their professional liability exposures. Current operations are dedicated to underwriting and marketing Public Officials Liability, Law Enforcement Liability and Educators Liability insurance.

We are dedicated to providing state-of-the-art professional underwriting management and loss control advisory services on behalf of our designated carriers. We operate through a network of professional producers who seek specialized services for their public, educational and non-profit entity clients.

## **Our Firm**

The firm was founded in 1993 by Martin H. Kanipe Jr., CPCU, ASLI, as an independent insurance program underwriting management company. We are dedicated to underwriting and marketing primary and excess Public Officials Liability, Law Enforcement Liability, School Board Errors and Omissions and Nonprofit D&O Liability insurance. Products are distributed through independent brokers nationwide.

We are the underwriting manager for AXA XL for primary Public Officials Liability, School Board Legal Liability and Police Professional Liability. AXA XL carriers have earned A.M. Best ratings of A XV (Excellent).

Loss Control services consisting of printed materials, assistance in presentations and advice from outside consultants are available as needed. We have the ability to structure and implement full-service programs, seminars and inspections for clients. PGU Employer Resource Center, provided by Enquiron is made available to all AXA XL insureds.

All claims are handled directly by the carrier or designated Third Party Administrator.

## **CONTACT US.**

4870 Sadler Road,  
Suite 102 Glen Allen, VA 23060  
Richmond, VA 23235  
Toll Free: 800-586-6502  
Direct: 804-272-6557  
FAX: 804-272-7852





**Professional  
Governmental  
Underwriters, LLC**

**The Authority.**

**PGU is The Authority® on  
Public Officials Management & Employment Practices Liability**

**Coverage Features:**

Defense in Addition to the Limit <i>(unless otherwise endorsed)</i>	✓
D&O/E&O/EPL coverage form	✓
Sublimit for Defense for Non-Monetary Claims	✓
Modified Consent to Settle (soft hammer) Clause with only 40% co-insurance requirement for insured	✓
Intentional/Criminal Acts Exclusion to include defense reimbursement until final favorable adjudication	✓
Business Invitee (Third Party) Liability covering Emotional Distress, Sexual Harassment, Discrimination and other allegations	✓
Broad definition of Loss including Back & Front Pay and Punitive Damages with a most favorable venue up to policy limit	✓
Broad definition of Wrongful Act including Personal Injury	✓
Broad definition of Claim including coverage for regulatory proceedings, arbitration hearings and EEOC hearings <i>(subject to exclusions)</i>	✓
Eminent Domain and Inverse Condemnation defense carve-back sublimit	✓
75-day mini-tail at no cost	✓
Bi-Lateral ERP options of 1, 2 and 3 years	✓
Sub-Limit for Crisis Management	✓
Sub-limit for Wage & Hour (FLSA)	Available by Endorsement
Sub-Limit for Fiduciary Liability	Available by Endorsement
Defense Only Reimbursement Coverage for Breach of Contract	Available by Endorsement
24/7 Toll-free and on-line access to Employer HELPLINE for employment law and HR support	✓

***This document is intended to summarize key coverage features generally available. It does not summarize your quotation/indication. Please review the entire quotation/indication, policy form and endorsements for specific details.***

**Professional Governmental Underwriters | 4870 Sadler Road, Suite 102, Glen Allen, VA 23060**

**Toll Free: 800-586-6502 | [www.pgui.com](http://www.pgui.com)**

# Public Officials Management & Employment Practices Liability

Page 3

Proposed Insured: Bethlehem Industrial Development Authority

## SUBJECTIVITIES - WE MUST BE PROVIDED WITH THESE ITEMS BEFORE COVERAGE CAN BE BOUND:

Please have PGU application signed and dated.

Please note: The Insured can register for our free PGU Employer Resource Center. You will receive the PGU ERC document with the bound policy which will provide instructions for registration.

Deadly Weapon Protection Insurance is available through Professional Governmental Underwriters, Inc. Please contact your underwriter if you are interested in additional information about this new product.

### Reminders:

A written request is required to bind coverage.

Backdating of coverage is not allowed.

See attached Coverage Features attachment for additional information.

Limits, retentions, terms and conditions quoted do not necessarily match those requested.

This proposal contains a brief outline of coverages to be included in any policy that may be issued in the future.

This is only a summary and the Terms and Conditions of any policy will take precedence over any proposal.

Minimum Earned Premium is the GREATER of \$1,500 or 25% of annual premium.

We will not cancel flat after inception date.  
Engineering Fee is non-refundable.

### Applicable Forms: (Other forms may apply. Consult Underwriter for details.)

PGU POL 2000 08 19	Public Officials and Employment Practices Liability Declarations
IL MP 9104 0314 GIC 03 14	In Witness
PGU 2002 04 17	Schedule of Policy Forms and Endorsements
PGU POL 2001 04 17	Public Officials and Employment Practices Liability Insurance Policy
PGU POL 1094 NY 04 17	New York State Amendatory
PGU 1052 (POL) 04 17	Minimum Earned Premium Upon Cancellation
PGU 1170 NY 04 17	New York Regulation 121 - Addendum to Declaration and Application
PGU 1171 NY 04 17	New York Changes - Transfer of Duties When a Limit of Insurance is Used Up
PGU 1133 01 22	US Professional Indemnity - Cyber Exclusion
PN CW 01 01 22	Notice to Policyholders - Fraud Notice
PN CW 02 01 19	Notice to Policyholders - Privacy Policy
PN CW 05 05 19	Notice to Policyholders - U.S. Treasury Department's Office of Foreign Assets Control ("OFAC")





**Regulatory Office**

Dept: Regulatory  
505 Eagleview Blvd., Suite 100  
Exton, PA 19341-1120  
(800) 688-1840

**INSURANCE COMPANY PROVIDING COVERAGE:**

**PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT PRACTICES LIABILITY  
INSURANCE DECLARATIONS**

POLICY NUMBER: \_\_\_\_\_ RENEWAL OF: \_\_\_\_\_

NOTICES

SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD. DEFENSE EXPENSES ARE PAID IN ADDITION TO THE LIMITS OF LIABILITY; EXCEPT THAT FOR SPECIFIC CLAIMS UNDER INSURING AGREEMENT A.1.b., THE APPLICABLE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES.

PLEASE READ AND REVIEW THE ENTIRE POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE BROKER.

Item 1. NAMED INSURED:

ADDRESS:

Item 2. POLICY PERIOD: (a) Inception Date: \_\_\_\_\_ (b) Expiration Date: \_\_\_\_\_  
(12:01 A.M. Standard Time at the Address Stated in Item 1.)

Item 3. LIMITS OF LIABILITY:

(a) Public Officials Liability

\$ \_\_\_\_\_ Company's maximum Limit of Liability for all Loss from each Claim under INSURING AGREEMENT A.1.a.;

(b) Non-Monetary Coverage – Defense Only

1. \$ \_\_\_\_\_ Company's maximum Limit of Liability for all Defense Expenses from each Claim under INSURING AGREEMENT A.1.b.;

2. \$ \_\_\_\_\_ **Company's** maximum Limit of Liability for all **Defense Expenses** from all **Claims** under **INSURING AGREEMENT A.1.b.**;

(c) Employment Practices Liability And Third Party Liability  
\$ \_\_\_\_\_ **Company's** maximum Limit of Liability for all **Loss** from each **Claim** under **INSURING AGREEMENT A.2.**

(d) Policy Aggregate Limit Of Liability  
\$ \_\_\_\_\_ **Company's** aggregate Limit of Liability for all **Loss** from all **Claims** under **INSURING AGREEMENT A.1.a.** and **INSURING AGREEMENT A.2.** and for all **Defense Expenses** from all **Claims** under **INSURING AGREEMENT A.1.b.**

(e) Public Officials Crisis Management Limit Of Insurance  
\$ \_\_\_\_\_ **Company's** maximum Limit of Insurance for all **Crisis Management Expenses** from all **Public Crisis Events** under Section A.3.

Item 4: **RETENTIONS**

a. \$ \_\_\_\_\_ each and every **Claim** under **INSURING AGREEMENT A.1.a.**

b. \$ \_\_\_\_\_ each and every **Claim** under **INSURING AGREEMENT A.1.b.**

c. \$ \_\_\_\_\_ each and every **Claim** under **INSURING AGREEMENT A.2.**

d. \$ \_\_\_\_\_ each and every **Public Crisis Event** under Section A.3.

Item 5: **NOTICES REQUIRED TO BE GIVEN TO THE COMPANY MUST BE ADDRESSED TO:**

AXA XL  
Attention: Denes Davis  
14643 Dallas Parkway, Ste 770  
Dallas, TX 75254

Phone: 972.383.7186  
Fax: 972.383.7177  
Email: [proclaimnewnotices@axaxl.com](mailto:proclaimnewnotices@axaxl.com)

Item 6: **POLICY PREMIUM:**

Item 7: **RETROACTIVE DATE:** \_\_\_\_\_

Item 8: **ENDORSEMENTS ATTACHED AT POLICY ISSUANCE:** REFER TO PGU 2002 04 17

Item 9: PRODUCER NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY, STATE, ZIP: \_\_\_\_\_

THESE DECLARATIONS, THE POLICY FORM, ANY ENDORSEMENTS AND THE APPLICATION  
CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE COMPANY AND THE INSURED RELATING TO  
THIS INSURANCE.

SPECIMEN

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Representative



**PUBLIC OFFICIALS LIABILITY AND  
EMPLOYMENT PRACTICES LIABILITY  
INSURANCE COVERAGE FORM**

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## PUBLIC OFFICIALS LIABILITY AND EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE FORM

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and what is not covered. Throughout the Policy the words "You" and "Your" refer to the **Named Insured**. The words "We", "Us", "Our" and the "Company" refer to the Company providing this insurance.

This Policy is incomplete unless the Declarations and all applicable forms and endorsements are attached. Words and phrases that appear in bold have special meaning and are defined in Section E. **DEFINITIONS**. Singular words shall include the plural, and plural words shall include the singular.

### A. INSURING AGREEMENTS

Subject to the Limits of Liability set forth in the Declarations, and all other terms and conditions of this Policy, **We** agree as follows:

1. Public Officials Liability

a. **Public Officials Wrongful Acts Coverage**

**We** will pay on behalf of an **Insured Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period for a **Public Officials Wrongful Act** occurring on or after the **Retroactive Date** and before the end of the **Policy Period**.

b. **Non-Monetary Relief - Defense Only Coverage**

**We** will reimburse **Defense Expenses** incurred by an **Insured** in connection with a **Claim** exclusively seeking **Non-Monetary Relief** at all stages of the **Claim**, where such **Claim** is first made against an **Insured** during the **Policy Period** or applicable Extended Reporting Period for a **Public Officials Wrongful Act** occurring on or after the **Retroactive Date** and before the end of the **Policy Period**.

2. Employment Practices Liability and Third Party Liability Coverage

**We** will pay on behalf of an **Insured Loss** that the **Insured** becomes legally obligated to pay as a result of a **Claim** first made against an **Insured** during the **Policy Period** or any applicable Extended Reporting Period for an **Employment Practices Wrongful Act** or **Third Party Wrongful Act** occurring on or after the **Retroactive Date** and before the end of the **Policy Period**.

3. Public Officials Crisis Management Coverage

**We** will pay on behalf of an **Insured** those **Crisis Management Expenses** incurred by the **Insured** in response to a **Public Crisis Event** first taking place during the **Policy Period** and reported to **Us** in accordance with Section F.6 of this Policy.

4. Supplemental Payments

**We** will pay on behalf of an **Insured**, in addition to the Limits of Liability set forth in the Declarations, all reasonable expenses incurred by the **Insured** at **Our** request to assist **Us** in the investigation or defense of any **Claim**, including actual loss of earnings of any **Insured**, because of time off from work; provided that the most **We** will pay will be \$500 per day, per **Insured**. Such "expenses" shall not include salaries paid to **Your Employees**.



For purposes of this Section, a **Claim** will be deemed to have been made when an **Insured** receives notice of the **Claim**.

## **B. DEFENSE AND SETTLEMENT**

1. **We** will have the right and duty to defend any **Claim** made against an **Insured** for a **Wrongful Act** covered under Insuring Agreements A.1.a. or A.2., even if the allegations of such **Claim** are groundless, false or fraudulent. **We** will have no obligation to pay any **Loss** or **Defense Expenses**, or to defend any **Claim** after the applicable Limit of Liability set forth in Item 3. of the Declarations has been exhausted.
2. For any **Claim** **We** defend under Section B.1., **We** will have the right to make investigations, conduct negotiations and enter into the settlement of any such **Claim** as **We** deem appropriate, with the consent of the **Insured**. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with **Our** recommendation, then, subject to the applicable Limit of Liability, **Our** liability for such **Claim** will not exceed:
  - a. The amount for which such **Claim** could have been settled by **Us** plus **Defense Expenses** up to the date the **Insured** refused to settle such **Claim**; plus
  - b. Sixty percent (60%) of any **Loss** or **Defense Expenses** in excess of the amount in Section B.2.a. above, incurred in connection with such **Claim**.
3. It shall be the duty of the **Insured**, and not **Us**, to defend any **Claim** covered under Insuring Agreement A.1.b. The **Insured** shall have the right to select defense counsel for the investigation and defense of any such **Claim**, subject to **Our** consent and approval, which shall not be unreasonably withheld.
4. **We** shall have no duty to continue to reimburse **Defense Expenses** after the applicable Limit of Liability for **Claims** arising under Insuring Agreement A.1.b. has been exhausted by the reimbursement of **Defense Expenses**.

## **C. LIMITS OF LIABILITY / RETENTIONS**

Regardless of the number of **Claims**, **Insureds** or claimants, **Our** liability under this Policy is limited as follows:

1. Public Officials Liability
  - a. The amount set forth in Item 3.(a) of the Declarations is the most **We** will pay for all **Loss** in excess of the Retention set forth in Item 4. of the Declarations resulting from each **Claim** covered under Insuring Agreement A.1.a. The payment of **Defense Expenses** shall be in addition to, and will not reduce, the applicable Limits of Liability.
  - b. The amount set forth in Item 3.(b)(1) of the Declarations is the most **We** will reimburse for all **Defense Expenses** in excess of the Retention set forth in Item 4.(b) of the Declarations resulting from each **Claim** covered under Insuring Agreement A.1.b.
  - c. The amount set forth in Item 3.(b)(2) of the Declarations is the most **We** will reimburse for all **Defense Expenses** in excess of the Retention set for in Item 4.(b) of the Declarations resulting from all **Claims** covered under Insuring Agreement A.1.b.
2. Employment Practices Liability and Third Party Liability

The amount set forth in Item 3.(c) of the Declarations is the most **We** will pay for all **Loss** resulting from each **Claim** covered under Insuring Agreement A.2. The payment of **Defense Expenses** shall be in addition to, and will not reduce, the applicable Limits of Liability.



3. Policy Aggregate

The amount set forth in Item 3.(d) of the Declarations is the most **We** will pay for all **Loss** resulting from all **Claims** covered under Insuring Agreements A.1.a. and A.2., and for all **Defense Expenses** resulting from all **Claims** covered under Insuring Agreement A.1.b.

4. Public Officials Crisis Management Coverage

In addition to the Policy Aggregate Limit of Liability, the amount set forth in Item 3.(e) of the Declarations is the most **We** will pay for all **Crisis Management Expenses** resulting from all **Public Crisis Events** covered under Insuring Agreement A.3.

5. Multiple Insuring Agreements

If a **Claim** covered under Insuring Agreement A.1.b. subsequently becomes a **Claim** for both monetary and **Non-Monetary Relief** covered under Insuring Agreements A.1.a. or A.2., such **Claim** shall become subject to the increased Retention and Limit of Liability applicable to Insuring Agreement A.1.a. or A.2., whichever is higher. **Defense Expenses** incurred in connection with such **Claim** shall be applied against the applicable Retention and shall reduce the applicable Limit of Liability.

6. Retention

**Our** obligation to pay or reimburse **Loss** or **Defense Expenses** under this Policy will only be in excess of the applicable Retention set forth in Item 4. of the Declarations. **We** will have no obligation to pay all or any portion of any Retention amount on behalf of any **Insured**, although **We** may, at **Our** sole discretion, advance such amount, in which event the **Insureds** agree to repay any amounts so advanced upon written request.

**D. EXCLUSIONS**

This Policy shall not apply to any **Claim** arising from or relating to:

1. The performance of any willful misconduct or dishonest, fraudulent, criminal or malicious act, error or omission by an **Insured**; the willful violation by an **Insured** of any law, statute, ordinance, rule or regulation; or an **Insured** gaining any profit, remuneration or advantage to which such **Insured** is not legally entitled.

Notwithstanding the above, **We** will defend the **Insured** or pay or reimburse **Defense Expenses** in connection with a **Claim** otherwise covered by this Policy until and unless the **Insured** admits, is adjudged or is otherwise proven to have committed any act, error or omission subject to this exclusion, in which case the **Insured** shall reimburse **Us** for any **Defense Expenses** advanced to or paid on behalf of such **Insured**.

2. **Loss** or **Defense Expenses** covered under Insuring Agreements A.1.a. or A.2., if Insuring Agreement A.1.b. also applies.
3. A **Claim**, other than one alleging an **Employment Practices Wrongful Act**, that is brought by, on behalf of, or in the name or right of **You** or any of **Your** duly elected, appointed or employed directors, officers, or officials, or any member of a commission, board or other unit operated by **You** and under **Your** jurisdiction, and within the apportionment of **Your** operating budget in the **Application**; provided that this exclusion shall not apply to a cross-claim or third-party complaint arising from a **Claim** made against such director, officer, official, or member that is otherwise covered under this Policy. Notwithstanding the above, this exclusion shall also not apply to a **Claim** brought by a former director, officer, official, or member who has not served in that capacity for at least three (3) years prior to the date such **Claim** is first made and where such **Claim** is brought



and maintained without the support, solicitation, assistance, participation or intervention of the **Named Insured** or an **Insured** not otherwise subject to this exception.

4. An actual or alleged violation of the Fair Labor Standards Act, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing; provided that this exclusion shall not apply to the extent that a **Claim** for an **Employment Practices Wrongful Act** alleges retaliatory action by an **Insured** in response to an **Employee's** exercise of rights under such statute or law.
5. Damage to, destruction of or loss of use of tangible property, **Bodily Injury**, corporal punishment, sickness, disease or death.
6. Emotional distress, mental anguish or humiliation not arising from an **Employment Practices Wrongful Act** or **Third Party Wrongful Act**.
7. **Sexual Abuse and Molestation**, including the allowance of or failure to prevent, stop, detect or reveal **Sexual Abuse and Molestation**.
8. The actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Pollutant**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutant**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.
9. A **Benefit Plan Act**, provided that this exclusion shall not apply to any **Claim** for actual or alleged retaliation with regards to benefits paid or payable. **We** will defend a **Claim** otherwise subject to this exclusion subject to a \$25,000 Limit of Liability for all **Defense Expenses** in excess of the applicable Retention set forth in Item 4. of the Declarations. **Defense Expenses** payable under this section are part of and not in addition to the applicable Limits of Liability set forth in Item 3. of the Declarations, and payment of such **Defense Expenses** by **Us** will reduce such Limits of Liability.
10. An **Insured's** liability under a contract or agreement, other than a manual of employment policies or procedures issued by **You**, unless such liability would have attached in the absence of such express contract or agreement. This exclusion shall not apply to the payment of **Defense Expenses** incurred in connection with a **Claim** for an **Employment Practices Wrongful Act** in the form of an actual or alleged breach of a contract to commence or continue employment with **You**.
11. A failure to obtain, implement, effect, comply with, provide notice under or maintain insurance, reinsurance, self-insurance, suretyship or bond.
12. Facts, circumstances, situations, transactions, events or **Wrongful Acts**:
  - a. Underlying or alleged in any mediation, arbitration, grievance proceeding, litigation or administrative or regulatory proceeding brought prior to and/or pending as of the Inception Date set forth in Item 2. of the Declarations:
    - (1) to which an **Insured** is or was a party; or
    - (2) with respect to which an **Insured**, as of the Inception Date set forth in Item 2. of the Declarations, knew or should reasonably have known that an **Insured** would be made a party thereto;



- b. Which was the subject of any notice given prior to the Inception Date set forth in Item 2. of the Declarations under any other policy of insurance or plan or program of self-insurance; or
- c. Which was the subject of any **Claim** made prior to the Inception Date set forth in Item 2. of the Declarations.

If, however, this Policy is a renewal of one or more policies issued by **Us** or an affiliate to **You**, and such coverage was in effect without interruption from the Inception Date of the first such policy to the Inception Date of this Policy, the reference in this exclusion to the Inception Date will be deemed to refer instead to the Inception Date of the first policy under which **We** or an affiliate began to provide **You** with the continuous and uninterrupted coverage of which this Policy is a renewal.

- 13. A lockout, strike, picket line, hiring of replacement workers, riot or civil commotion, or other similar actions in connection with labor disputes or labor negotiations.
- 14. The activities of an **Insured** as a law enforcement officer, police officer, police department or other law enforcement unit or agency; the operation of any jail cell, holding cell, detention or lock-up facility of any kind; or the activities of an **Insured** charged with the power to arrest, detain or interrogate another person, or to seize or confiscate the property of any individual or entity; provided; however; that this exclusion shall not apply to **Claims** arising out of the administrative functions or activities of an **Insured** in the enforcement of **Your** municipal code, laws or regulations, including but not limited to, the issuance of citations, fines, warnings, notices of violation, the issuance or denial of licenses or permits, or the inspection of property or buildings, by persons authorized to conduct such functions or activities on **Your** behalf. This exclusion shall also not apply to any **Claim** by or against a law enforcement officer or police officer in their capacity as an **Employee** under this Policy, for an **Employment Practices Wrongful Act**.
- 15. The operation of the laws and principles of eminent domain, condemnation, inverse condemnation, temporary or permanent taking, adverse possession or dedication by adverse use; however, **We** will defend such **Claim** subject to a \$50,000 Limit of Liability for all **Defense Expenses** in excess of the applicable Retention set forth in Item 4. of the Declarations. **Defense Expenses** payable under this section are part of and not in addition to the applicable Limits of Liability set forth in Item 3. of the Declarations, and payment of such **Defense Expenses** by **Us** will reduce such Limits of Liability.
- 16. The Securities Act of 1933, the Securities Exchange Act of 1934, any state "blue sky" law, or any other federal, state or local securities law, or any rule or regulation promulgated under any of the foregoing; or any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.
- 17. The sale or offering of securities by **You**, whether or not such securities are exempt from registration by the SEC; **Your** actual or proposed filing for an Initial Public Offering; or a debt offering or debt financing, including but not limited to bonds, notes, debentures and guarantees of debt.
- 18. Tax credits or tax incentives or the application thereof; the formulation of tax rates; the assessment, appraisal or valuation of property; the assessment of taxes or other fees; the collection of taxes, fees or other amounts; and the disbursement of tax refunds.
- 19. War, whether or not declared, or any act or condition incidental to war, including civil war, insurrection, rebellion or revolution; or **Terrorism**.
- 20. Construction, architectural, engineering, procurement, security or other professional services, including any contract or agreement pertaining to such services.



21. Legal services including those services performed by any individual as a lawyer, arbitrator, mediator, title agent, notary public, administrator, conservator, receiver, executor, guardian, trustee or in any other fiduciary capacity.
22. **Crisis Management Expenses** arising from any **Public Crisis Event** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a. War, whether or not declared, or any act or condition incidental to war, including civil war, **Terrorism**, insurrection, rebellion or revolution;
  - b. Actual or attempted suicide;
  - c. Actual or attempted kidnapping or extortion;
  - d. Acts, whether intentional or not, by members of the **Victim's** immediate family members or members of the **Victim's** household; or
  - e. The activities of any person as a law enforcement officer, police officer, correctional officer, member of a police department or other law enforcement unit or agency; or the activities of any person charged with the powers to arrest, detain or interrogate another person, seize or confiscate the property of any individual or entity.

#### E. DEFINITIONS

Whenever used in this Policy, the term:

1. **Application** means all Applications submitted to **Us**, including any and all attachments and other materials submitted to **Us** in connection with the underwriting of this Policy or for any other policy of which this Policy is a renewal.
2. **Benefit Plan Act** means a **Claim** alleging liability under a pension, profit sharing, welfare benefit or other employee benefit program established in whole or part for the benefit of an **Insured**, or based upon, arising out of or in any way involving the Employee Retirement Security Act of 1974 (except Section 510 thereof) or any amendments thereto or regulations promulgated thereunder or similar provisions of any federal, state or local law or common law.
3. **Bodily Injury** means physical injury, sickness or disability of a person, including mental incapacity or death resulting from any of these at any time.
4. **Business Invitee** means a natural person, solely in their capacity as one who is invited to enter into and remain on any **Premises** for a purpose directly or indirectly connected with **Your** business or commercial dealings therein. A Business Invitee does not include a trespasser or any person who enters any **Premises** without **Your** knowledge or permission, or any **Employee**, student or minor.
5. **Claim** means:
  - a. A written demand for monetary damages or **Non-Monetary Relief**;
  - b. A written request to toll or waive any statute of limitations, or to waive any contractual time bar, relating to a potential suit against an **Insured** for a **Wrongful Act**;
  - c. A civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
  - d. A criminal proceeding that is commenced by the return of an indictment or similar document;



- e. An administrative or regulatory proceeding or investigation, including a proceeding brought by or before the Equal Employment Opportunity Commission or similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or
- f. An arbitration proceeding or other alternative dispute resolution proceeding, to which the **Insured** must submit or does submit with **Our** consent.

Claim shall not include any labor grievance, arbitration or other proceeding brought pursuant to a collective bargaining agreement.

- 6. **Crisis Management Expenses** means **Public Relations Expenses, Travel/Printing Expenses, Family Travel Expenses** and **Post-Crisis Expenses**; provided, however, that **Crisis Management Expenses** shall not include:
  - a. **Your** overhead expenses or any salaries, wages, fees or benefits of **Employees**;
  - b. The cost of medical, psychiatric or counseling services, even if provided by a **Crisis Management Firm**; or
  - c. Any fees or expenses related to civil, administrative or criminal investigations, proceedings or litigation.
- 7. **Crisis Management Firm** means a public relations firm, **Crisis Management Firm** or law firm hired or appointed by **You** to perform **Crisis Management Services** in connection with a **Public Crisis Event**. It shall be the duty of the **Insured** to select and retain the **Crisis Management Firm**.
- 8. **Defense Expenses** means reasonable legal fees and expenses **We** incur for the investigation, defense and appeal of a **Claim** by attorney(s) retained by **Us**, as well as all other fees, costs or expenses resulting from the investigation, adjustment, defense and appeal of such **Claim** by **Us**, or by **You** with **Our** prior, written consent. **Defense Expenses** does not include any expenses incurred by **You** prior to the date a **Claim** is first reported to **Us**, nor does it include the time and expense incurred by **You** in resolving a **Claim**, including but not limited to the costs of **Your** in-house counsel.
- 9. **Emergency Response Plan** means:
  - a. A formal written and adopted public safety and crisis response manual that details **Your** policies and procedures in the event of an **Public Crisis Event**; or
  - b. In the absence of such formal written manual, any applicable federal, state or local law, ordinance or statute that authorizes **You** to take emergency action or specifically describes the **Your** obligations in the event of a public emergency.
- 10. **Employee** means the following natural persons, but only for **Wrongful Acts** committed while acting within the scope of employment for **You**:
  - a. Full-time, part-time, seasonal and temporary **Employees**; and
  - b. All persons who perform services for **You** on a volunteer basis and under **Your** direction and control.

**Employee** shall not include persons providing services to **You** under a mutual aid agreement or any similar agreement.



11. **Employment Practices Wrongful Act** means any of the following, when alleged by any of **Your** past or present **Employees** or any applicant for employment with **You**, in connection with that person's actual or proposed employment relationship with **You**:
- a. Wrongful dismissal, discharge or termination of employment, whether actual or constructive;
  - b. Harassment (including sexual harassment whether "quid pro quo," hostile work environment or otherwise);
  - c. Discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws;
  - d. Breach of any manual of employment policies or procedures issued to the **Insureds** by **You**;
  - e. Retaliatory action in response to that **Employee's**:
    - (1) disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
    - (2) actual or attempted exercise of any right that **Employee** has under law;
    - (3) filing of any **Claim** under the Federal False Claims Act or any other federal, state, local or foreign "whistleblower" law;
  - f. Misrepresentation, libel, slander, humiliation, defamation, invasion of privacy, infliction of emotional distress or mental anguish;
  - g. Wrongful failure to employ or promote, wrongful deprivation of career opportunity, including tenure, wrongful demotion or evaluation or wrongful discipline; or
  - h. Breach of a contract to commence or continue employment with **You**.

An Employment Practices Wrongful Act shall not include a **Public Officials Wrongful Act**.

12. **Family Travel Expenses** means reasonable and necessary expenses incurred by any natural or adoptive parent, legal guardian, spouse, or child of a **Victim** within thirty (30) days after a **Public Crisis Event** to travel to the location of the **Public Crisis Event**, so long as the **Public Crisis Event** took place on an official trip sponsored by **You**. For the purpose of this definition, coach air transportation or ground transportation and standard class hotel accommodations shall be deemed reasonable expenses.
13. **Insured** means:
- a. **You**;
  - b. **Your** past, present or future duly elected, appointed or employed officials, directors, officers, or members of commissions, boards or other units operated by **You** and under **Your** jurisdiction, within the apportionment of **Your** operating budget in the **Application**; provided that an **Insured** shall not include the following boards, commissions or units, or any officials, directors, officers, members or **Employees** thereof: schools, airports, transit authorities, hospitals, nursing homes, housing authorities, port authorities or any type of utility companies, unless otherwise provided in an Endorsement attached hereto;



- c. **Employees;**
  - d. Persons providing services to **You** under a mutual aid or similar agreement that is disclosed on the **Application**, but solely while acting in that capacity; however, such persons are not **Insureds** with respect to **Claims** for **Employment Practices Wrongful Acts** or **Third Party Wrongful Acts**;
  - e. In the event of the death, incapacity or bankruptcy of a natural person **Insured**, such **Insured's** estate, heirs, legal representatives or assigns, but only in connection with a **Claim** for an alleged **Wrongful Act** by such natural person **Insured**; and
  - f. The lawful spouse or domestic partner of any individual **Insured** identified in the paragraphs above, but only with respect to liability arising out of **Wrongful Acts** committed by such individual, and provided that such spouse or domestic partner is represented by the same counsel as such individual with respect to any **Claim**.
14. **Loss** means damages, pre-judgment interest, post-judgment interest, front pay and back pay, judgments, settlements, punitive or exemplary damages where insurable under applicable law or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**.

Loss will not include:

- a. **Defense Expenses;**
- b. **Non-Monetary Relief;**
- c. Any amount representing the value of diminished or lost retirement, health care or other benefits;
- d. Fines, taxes, penalties;
- e. The cost of disaster response activities conducted by the **Insured** as required by the Federal Emergency Management Agency (FEMA);
- f. Amounts due under any contract to commence, continue or separate from employment with **You**, including but not limited to the value of any compensation or employment benefits lost, or the cost of specific performance in connection with any such contract; or
- g. The multiplied portion of a multiple damages award; provided that Loss will include any multiplied damages awarded pursuant to the Age Discrimination in Employment Act or the Equal Pay Act ("Specified Multiplied Damages") that an **Insured** is obligated to pay as a result of a **Claim**, but only if such Specified Multiplied Damages are insurable under applicable law.

For the purpose of determining the insurability of punitive damages, exemplary damages or Specified Multiplied Damages under this Policy, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (1) is the location of the court which awarded or imposed such punitive or exemplary damages or Specified Multiplied Damages;
- (2) is where **You** are incorporated or otherwise organized or has a place of business; or
- (3) is where **We** are incorporated or have **Our** principal place of business.

15. **Named Insured** means the public entity set forth in Item 1. of the Declarations.



16. **Non-Monetary Relief** means relief or redress in any form other than compensatory or monetary damages, including: the costs of complying with any injunctive, declaratory or equitable relief, remedy or order; the costs of compliance with the Americans with Disabilities Act or any similar provisions of federal, state or local statutory or common law; and any award of claimant's or plaintiff's attorneys fees or costs, whether or not provided for by statute, but only with respect to **Claims** seeking such Non-Monetary Relief. Non-Monetary Relief shall not include the cost of disaster response activities conducted by the **Insured** as required by the Federal Emergency Management Agency (FEMA).
17. **Personal Injury** means the following, when alleged against an **Insured** by an entity or a person who is not a past or present **Insured**, or applicant for employment with the **Insured**, libel, slander, or other defamation; invasion of privacy, false arrest, erroneous service of process, wrongful detention or imprisonment, malicious prosecution, wrongful entry or eviction, subject to Exclusion D.14., infringement of copyright or trademark, or other unauthorized use of title, or plagiarism or misappropriation of ideas.
18. **Policy Period** means the period from the Inception Date of this Policy set forth, in Item 2. of the Declarations, to the Expiration Date of this Policy set forth in Item 2. of the Declarations, or to any earlier cancellation date of this Policy.
19. **Pollutant** means any of the following:
- a. Smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, Pollutants or contaminants;
  - b. Mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);
  - c. Lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
  - d. Nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.
20. **Post-Crisis Expenses** means reasonable costs incurred by **You** within sixty (60) days after a **Public Crisis Event** to purchase equipment or make property improvements that are not covered by other insurance and that relate directly to the security of **Your Premises** and may assist in prevention or mitigation of future **Public Crisis Events**.
21. **Premises** means the following, if located in the continental United States:
- a. A building, facility or other real property including adjoining ways, which **You** own, rent or lease and is used by **You** to conduct **Your** business, including administration, maintenance and recreational facilities;
  - b. A building, facility, or other real property being visited by **Your** elected, appointed or employed officials, directors, officers, members of commissions, boards or other units operated by **You** and under **Your** jurisdiction, or **Employees**, on an official business trip on **Your** behalf;



- c. A vehicle that **You** own or lease pursuant to a written contract, but solely if being used in the transportation of **You** elected or appointed or employed officials, directors, officers, members of commissions, boards or other units operated by **You** and under **Your** jurisdiction, or **Employees**.

Premises does not include any location for an event independently organized by **Employees** or others without **Your** knowledge or approval.

22. **Public Crisis Event** means:

- a. A violent act of a criminal nature taking place on **Your Premises** that causes **Bodily Injury** to a **Victim**; or
- b. A credible threat communicated to **You** of a violent act of a criminal nature taking place on **Your Premises** which **You** reasonably believe may imminently cause **Bodily Injury** to a **Victim**;

in response to which **You**: (1) implement **Your Emergency Response Plan**; (2) contact federal, state or local police authorities for assistance; and (3) invoke an emergency succession plan due to **Bodily Injury** to a **Victim**, or the credible threat thereof.

Public Crisis Events involving a sequence or series of related violent acts or threats will be deemed to have taken place at the time the first violent act began or threat occurred. Continuous or repeated exposure to substantially the same acts or threats, regardless of how many **Victims** by the same perpetrator, or two or more perpetrators acting in concert, shall be considered one Public Crisis Event.

23. **Public Officials Wrongful Act** means:

- a. An actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, including any **Personal Injury**, by any **Insured**, if committed in the performance of his or her duties for **You**;
- b. An actual or alleged violation of civil rights protected under 42 USC § 1981 et seq., or any similar federal, state or local law, by any **Insured**, if committed in the performance of his or her duties for **You**;
- c. Any matter claimed against an **Insured** solely by reason of his or her status as an **Insured** during the **Policy Period**, if committed in the performance of his or her duties for **You**; or
- d. Any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by a natural person **Insured** while serving, at the direction or request of **You**, in his or her capacity as a board member or committee member of a not-for-profit organization, other than **You**, which is exempt from taxation under Section 501(c) (3) of the Internal Revenue Code, as the same may be amended from time to time, at **Your** direction or request.

Coverage available pursuant to subsection d. shall be excess of and not contribute with any other insurance plan or program of self-insurance carried by such not-for-profit corporation, and any contribution or indemnification to which a natural person **Insured** is entitled from such not-for-profit organization.

A Public Officials Wrongful Act shall not include an **Employment Practices Wrongful Act** or a **Third Party Wrongful Act**.



24. **Public Relations Expenses** means the reasonable and necessary fees and expenses incurred by **You** in response to a **Public Crisis Event**, within one hundred twenty (120) days after such **Public Crisis Event** took place, for services performed by a **Crisis Management Firm** to minimize potential harm to **Your** name or reputation as a result of such **Public Crisis Event**, including but not limited to maintaining and restoring public confidence in **You** and providing advice to **Insureds**.
25. **Related Claims** means all **Claims** based upon, arising out of, resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances situations, transactions or events, whether related logically, casually or in any other way. All Related Claims will be deemed to be a single **Claim** for purposes of Section **C. LIMITS OF LIABILITY / RETENTIONS** and **F. CONDITIONS**, Item 5. Notice; Timing; and Interrelationship of Claims.
26. **Retroactive Date** means the applicable date set forth in Item 7. of the Declarations.
27. **Sexual Abuse and Molestation** means any actual or alleged conduct, physical act, gesture or spoken or written word of a sexual nature directed by an **Insured**, or by any person for whom an **Insured** is legally responsible, toward any person under the care, custody or control of any **Insured**, including without limitation any actual, alleged or threatened sexual intimacy (even if allegedly consensual), sexual molestation, sexual assault or battery, exploitation or any other sexual act.
28. **Terrorism** means "Certified Acts" as defined by the Terrorism Risk Insurance Act of 2002, or any subsequent amendments or reauthorizations of such Act (TRIA).
29. **Third Party Wrongful Act** means any of the following, when alleged against an **Insured** by **Your Business Invitee** or by a third party individual (other than another **Insured**, student or minor) with whom an **Insured** interacts outside of the **Premises** for the purpose of conducting official business on **Your** behalf:
- a. Harassment (including sexual harassment);
  - b. Discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state or local laws; or
  - c. Invasion of privacy.
- A Third Party Wrongful Act shall not include a **Public Officials Wrongful Act**.
30. **Travel/Printing Expenses** means reasonable and necessary expenses incurred by **You** in response to a **Public Crisis Event** within one hundred twenty (120) days after such **Public Crisis Event** took place for printing, advertising, mailing materials, or travel by any **Insured** or the **Crisis Management Firm** in connection with such **Public Crisis Event**.
31. **Victim** means:
- a. An elected, appointed or employed officials, directors, officers, members of commissions, boards or other units operated by **You** and under **Your** jurisdiction;
  - b. A **Business Invitee**; or
  - c. An **Employee**;
- who sustain(s) a **Bodily Injury**.



Victim shall not include independent contractors or subcontracted personnel working on the **Premises** or any person who has or is alleged to have made any attempt at, or knowingly participated in, or encouraged any **Public Crisis Event**.

32. **Wrongful Act** means any **Public Officials Wrongful Act, Employment Practices Wrongful Act** or **Third Party Wrongful Act**.

**F. CONDITIONS**

1. **Other Insurance:**

Insurance provided under this Policy will be excess of and will not contribute with other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy by reference in such other policy to the Policy number of this Policy. This Policy will not be subject to the terms of any other insurance.

In the event that coverage is available for a **Claim** under any other insurance policy that applies to **Claims for Bodily Injury, Personal Injury** or property damage, **We** will have no duty to defend such **Claim**, or to pay any **Defense Expenses** incurred by **You** or on **Your** behalf, or to contribute to or reimburse **Defense Expenses** incurred by such other insurance policy in connection with such **Claim**.

2. **Cooperation:**

In the event of a **Claim**, the **Insured** will provide **Us** with all information, assistance and cooperation that **We** reasonably request, and will do nothing that may prejudice **Our** position or potential or actual rights of recovery. The **Insured** shall not make any payment, admit any liability, settle any **Claim**, assume any obligation, or incur any expense without **Our** consent. At **Our** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements.

3. **Subrogation:**

**We** will be subrogated to the extent of any payment **We** make under this Policy to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable **Us** effectively to bring suit in their name. The obligations of the **Insured** under this condition will survive the expiration or cancellation of the Policy.

4. **Extended Reporting Period:**

- a. If this Policy is cancelled or non-renewed for any reason other than nonpayment of premium, the **Named Insured** will have the right to:
- (1) a seventy-five (75) day Automatic Extended Reporting Period, beginning on the effective date of such cancellation or non-renewal, for no additional premium charge; and
  - (2) to purchase an Additional Extended Reporting Period, beginning on the effective date of the cancellation or non-renewal, for an additional premium; provided that the **Named Insured** elects to purchase the Additional Extended Reporting Period in writing and provides **Us** any additional premium due within thirty (30) days of the effective date of cancellation or non-renewal, subject to the available options as set forth in subparagraph c.



- b. The coverage otherwise afforded by this Policy will be extended to apply to **Loss** or **Defense Expenses** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed on or after the **Retroactive Date** and before the end of the **Policy Period**. An Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be effective if all premiums and retentions due under the Policy have been paid. The Automatic Extended Reporting Period shall not become effective if the **Insured** procures replacement coverage. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.
- c. Additional Extended Reporting Period Options:
  - (1) a one (1) year extended reporting period for an additional premium of seventy percent (70%) of the Premium set forth in Item 6. of the Declarations;
  - (2) a two (2) year extended reporting period for an additional premium of one hundred percent (100%) of the Premium set forth in Item 6. of the Declarations; or
  - (3) a three (3) year extended reporting period for an additional premium of one hundred and fifty percent (150%) of the Premium set forth in Item 6. of the Declarations.

5. **Notice; Timing; and Interrelationship of Claims:**

- a. As a condition precedent to any right to payment under this Policy, the **Insured** must give **Us** written notice of such **Claim**, with full details, as soon as practicable after any of **Your** public officials or administrators becomes aware of such **Claim** and in no event later than seventy-five (75) days after the expiration of the **Policy Period**.
- b. If, during the **Policy Period**, the **Insured** first becomes aware of any **Wrongful Act** that may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:
  - (1) gives **Us** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages that may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and
  - (2) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;then **We** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.
- c. All notices under this condition must be sent in writing to the address or email address set forth in Item 5. of the Declarations.
- d. All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with Condition 5.b., whichever is earlier.



6. **Notice of Crisis Management Expenses; Inspection of Property:**

- a. As a condition precedent to coverage under Insuring Agreement A.3. of this Policy, **You** must notify **Us** in writing as soon as practicable during the **Policy Period**, but in no event more than ten (10) days after the **Public Crisis Event** first took place. The written notice must be as complete as possible, stating how, when, and where the **Public Crisis Event** took place and the **Bodily Injury** or damage arising therefrom, and providing a summary of the **Crisis Management Expenses** incurred or expected to be incurred.
- b. To be eligible for coverage, **Crisis Management Expenses** must be submitted to **Us** no later than ninety (90) days after such **Crisis Management Expenses** are incurred.
- c. **We** will be permitted, but not obligated, to inspect **Your** property and operations and to review the **Emergency Response Plan** at any time, upon reasonable notice. Neither **Our** right to make such inspection or review nor the making of any such inspection or review shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others to determine or warrant that such property and operations are safe or that the **Emergency Response Plan** is adequate, effective or legal.

7. **Cancellation; No Obligation to Renew:**

- a. **We** may not cancel this Policy except for **Your** failure to pay a premium when due. **We** will deliver or mail by first class, registered or certified mail to **You** at **Your** last known address, written notice of cancellation at least twenty (20) days before the effective date of cancellation. Such notice shall state the reason for cancellation. A copy of such notice shall be sent to the agent of record.
- b. **You** may cancel this Policy by mailing to **Us** written notice stating when, not later than the Expiration Date set forth in Item 2. of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in Item 6. of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time that cancellation by **You** is effective or as soon as practicable thereafter. If the Policy Aggregate Limit of Liability, as set forth Item 3.(d) of the Declarations, is exhausted by the payment of **Loss** or **Defense Expenses**, the entire premium will be deemed fully earned.
- c. **We** will not be required to renew this Policy upon its expiration. If **We** elect not to renew this Policy, **We** will deliver or mail by first class, registered or certified mail to **You** at **Your** last known address, written notice to that effect at least sixty (60) days before the Expiration Date set forth in Item 2. of the Declarations. Such notice shall state the specific reason(s) for non-renewal. A copy of such notice shall be sent to the agent of record.

8. **Representations:**

The **Named Insured** represents that the statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance upon the truth thereof, which are deemed to be incorporated into and to constitute a part of this Policy.

9. **Separation of Insureds; Protection of Innocent Insureds:**

- a. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void:
  - (1) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and



- (2) with respect to **You**, if, and only if, **Your** elected or appointed official, or the highest ranking member of any of **Your** boards, commissions or units, or any other person in a functionally equivalent position, knew of such untruth, misrepresentation or omission.
- b. No act, error or omission of any **Insured** will be imputed to any other **Insured** to determine the application of any exclusion set forth in Section **D. EXCLUSIONS** of this Policy. If it is determined that an exclusion applies to an **Insured** in connection with a **Claim**, no coverage shall be available under this Policy for such **Insured**, however, coverage shall continue in effect under this Policy for any other **Insured**, subject to all other terms, conditions, and exclusions herein.
10. **No Action against Us:**
- a. No action may be taken against **Us** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and **Us**.
- b. No person or entity will have any right under this Policy to join **Us** as a party to any **Claim** to determine the liability of any **Insured**; nor may **We** be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**.
11. **Insolvency of Insured:**
- We** will not be relieved of any of **Our** obligations under this Policy by the bankruptcy or insolvency of an **Insured**.
12. **Non-Accumulation of Limits:**
- If coverage is provided under this Policy and any other policy or policies underwritten or reinsured by **Us** to **You**, the maximum amount payable in the aggregate under this Policy and all such other policies shall not exceed the single highest Limit of Liability available under all such policies. Only one retention or deductible will apply, which shall be the retention or deductible corresponding to the Limit of Liability applied to the **Claim**.
13. **Territory:**
- This Policy applies to **Wrongful Acts** committed by an **Insured**, or to any **Claim** brought against an **Insured**, anywhere in the world.
14. **Authorization and Notices:**
- The **Insureds** agree that **You** will act on their behalf with respect to receiving any notices and return premiums from **Us**.
15. **Changes:**
- This Policy contains all the agreements between any and all **Insureds** and **Us** concerning this insurance. The **Named Insured** is authorized on behalf of all **Insureds** to make changes in the terms of this Policy with **Our** consent. This Policy's terms can be amended or waived only by endorsement issued by **Us** and made part of this Policy.
16. **Assignment:**
- No assignment of interest under this Policy will bind **Us** without **Our** consent.

17. **Entire Agreement:**

The **Insured** agrees that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between every **Insured** and **Us** or any of **Our** agents relating to this insurance.

18. **Choice of Law:**

All matters arising hereunder, including but not limited to questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York, notwithstanding New York's conflicts of law rules.

19. **Premium:**

The **Named Insured** shall be responsible for payment of all premiums and will be the payee of any return premium. The Policy premium may be changed at any time if the Policy terms and conditions are changed by, among other things, adding additional insureds, changing limits of liability or extending the **Policy Period**. The **Named Insured** or its designee agrees to pay all increased premiums promptly in accordance with the Company's invoices.

20. **Conformity to Statute:**

All terms of this Policy that conflict with any applicable laws or regulations are hereby amended to conform to such laws or regulations.

21. **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

**In witness whereof, the Insurer has caused this Policy to be executed on the Declarations Page.**



# Your Business Owner's Policy Quote

**Prepared for:**

Bethlehem Industrial Development Agency  
445 DELAWARE AVE  
DELMAR, NY 12054-3041

**Your Primary Location:**

445 DELAWARE AVE.  
DELMAR, NY 12054-3041

**Class & Class Code:**

Consultant - Business and Management; 65881

**Policy Term:**

October 06, 2023 – October 06, 2024

**Quote Good Through\*:**

January 02, 2024

**Proposal Creation Date:**

October 5, 2023, 11:13 AM

Insurance underwritten by: Hartford Underwriters Insurance Company.

**What To Do Next:**

Thank you for your interest in The Hartford. For questions or to purchase coverage, contact Greg Turner at (518) 439-9958

**Your Reference Number:**

01 SBA BA6TYL-002

**Audit Period:** Non-Auditable**Agency Information:**

BURT ANTHONY ASSOCIATES  
750 Delaware Avenue  
Delmar, NY 12054

\*Premium is based on information provided during the application process and is subject to change should any change be made to the policy. Examples of possible changes include, but are not limited to, changes to coverage, Named Insured(s), location(s), and effective date.

PREMIUM SUMMARY			
COVERAGE		PRICE	
Business Owner's Policy		\$665.00	
Fees and Surcharges		\$4.65	
<b>YOUR ESTIMATED ANNUAL PREMIUM:</b>		<b>\$669.65**</b>	
Proposal summary	Page 2	Recommended coverages	Page 10
Coverage details	Page 4	Payment options	Page 11

\*\*Your Estimated Premium may change based on coverage changes made through endorsement or if your policy is subject to Premium Audit.

**Acknowledged and Accepted by**

\_\_\_\_\_  
(Signature of insured)

\_\_\_\_\_  
(Date)

† The Hartford's Customer Claims Ratings as of February 2019. Customer claims reviews were collected and tabulated by The Hartford and reviews are not representative of all customers.

This document is only a proposal. It can't be used as proof of coverage, unless bound by an authorized agent.

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# Quote Summary:

## Coverage for Your Small Business

This quote overview was created to show you how we propose to cover your business and to help you feel confident in the coverages that have been selected. Each section below breaks out some of the important features of your proposed policy.

We're ready to welcome you as a customer of The Hartford! All that's left is for you to let us/your agent know when you'd like to start your coverage.

LOCATION(S)			
LOCATION CLASS CODE(S)	DESCRIPTION	TYPE AND AREA	VALUATION How we calculate the value of your property
LOC 1; BLDG 1 65881	445 DELAWARE AVE DELMAR, NY 12054-3041	Joisted Masonry, 500 sq ft	Business Personal Property: Replacement Cost

### POLICY SUMMARY

#### PROPERTY

Your PROPERTY COVERAGE protects property that you own, lease or rent. This can include buildings, equipment, inventory and even cash, securities or valuable records. The below overview shows some of your Property limits.

#### PROPERTY LIMITS

DEDUCTIBLE: \$1,000	LOC 1; BLDG 1
WINDSTORM OR HAIL PERCENTAGE DEDUCTIBLE	NA
<b>BUILDING LIMIT</b> We'll pay up to the limit to repair or replace your buildings and structures at the covered location. This includes additions, fixtures and equipment you've installed.	\$0
<b>BUSINESS PERSONAL PROPERTY LIMIT</b> We'll pay up to the limit to repair or replace your furniture, supplies, inventory and other things your business uses.	\$5,000

#### **S** STRETCH® COVERAGE

Where Property coverage was elected for you, you'll benefit from added coverages, increased limits and an added blanket limit. We use an **S** on the Property Coverage Detail page to indicate coverages that have been added or enhanced by your STRETCH®.

**STRETCH® -  
\$50,000  
Blanket**

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# Quote Summary:

## Coverage for Your Small Business

### CONTINUED

#### BUSINESS LIABILITY (Also known as General Liability)

Your BUSINESS LIABILITY COVERAGE helps protect and defend your business from covered claims alleging that you damaged someone's property, injured them or defamed them. The below overview shows some of your Business Liability limits.

<b>EACH OCCURRENCE LIMIT</b> We'll pay up to this amount for all claims related to a single incident. This total applies no matter how many people make claims.	\$1,000,000
<b>GENERAL AGGREGATE LIMIT</b> We'll pay up to this total amount for all losses that occur during your policy term, except for those losses that are included in the Products/Completed Operations Aggregate, which are paid under a separate aggregate limit as described below.	\$2,000,000
<b>PRODUCTS/COMPLETED OPERATIONS AGGREGATE</b> We'll pay up to this total amount for all losses that occur during your policy term as a result of work you completed or for a product you distributed or sold. It does not cover you for things that happen while you are doing work.	\$2,000,000

#### CUSTOMIZED COVERAGES FOR YOUR BUSINESS

These added coverages make your policy more unique. They protect against specific risks your business could face.

#### BUSINESS LIABILITY COVERAGES ADDED

COVERAGE	LIMIT	PREMIUM
Blanket Additional Insured by Contract	Included <sup>1</sup>	\$52
Hired Auto and Non-Owned Auto	Included <sup>1</sup>	\$144

<sup>1</sup> Included in Business Liability Limit(s)

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# Property Coverages Detail

Below you'll find a breakdown of the specific property coverages your policy includes. These coverages only apply to the location(s) where Property coverage was elected.

You'll also see a specific limit, which is either the maximum dollar amount or the length of time that your coverage pays.

**S INDICATES COVERAGES THAT HAVE BEEN ADDED OR ENHANCED BY THE ADDITION OF YOUR STRETCH®. STRETCH® BLANKET LIMIT: \$50,000**

PROPERTY COVERAGES	TOTAL LIMIT OF INSURANCE
<b>S</b> Accounts Receivable	Included in STRETCH® Blanket Limit
Arson and Theft Reward	\$10,000
<b>S</b> Back-up of Sewers and Drains Coverage	Included <sup>2</sup>
<b>S</b> Brands and Labels	Included <sup>2</sup>
<b>S</b> Building Property of Others	\$10,000
<b>S</b> Business Income and Extra Expense	
<b>S</b> Extended Business Income	60 days
<b>S</b> Limit Type	Actual Loss Sustained
<b>S</b> Period of Restoration	12 months
<b>S</b> Waiting Period	None
<b>S</b> Business Income for Off-Premises Utility Services	
<b>S</b> Limit	\$25,000
<b>S</b> Waiting Period	12 hours
Business Income from Civil Authority Actions	
Duration of Coverage	30 days
Waiting Period	None
<b>S</b> Business Income from Dependent Properties	

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# Property Coverages Detail

## CONTINUED

PROPERTY COVERAGES	TOTAL LIMIT OF INSURANCE
<input type="checkbox"/> Limit	\$25,000
<input type="checkbox"/> Period of Restoration	12 months
<input type="checkbox"/> Waiting Period	None
<input type="checkbox"/> Business Income from Off-Premises Operations	
<input type="checkbox"/> Extended Business Income	60 days
<input type="checkbox"/> Limit	\$25,000
<input type="checkbox"/> Waiting Period	None
<input type="checkbox"/> Business Income from Websites	
<input type="checkbox"/> Limit	\$10,000
<input type="checkbox"/> Max Period of Restoration	7 days
<input type="checkbox"/> Waiting Period	12 hours
<input type="checkbox"/> Claim Expense	\$10,000
Collapse	Included <sup>2</sup>
<input type="checkbox"/> Computers Worldwide	Included in STRETCH® Blanket Limit
<input type="checkbox"/> Contract Penalties	\$1,000
<input type="checkbox"/> Debris Removal	Included in STRETCH® Blanket Limit
<input type="checkbox"/> Limit	25% of amount paid for covered loss
<input type="checkbox"/> Electronic Data	
<input type="checkbox"/> Policy Year Limit	\$50,000
<input type="checkbox"/> Employee Dishonesty Coverage - Excludes ERISA Compliance	
<input type="checkbox"/> Include Property Managers	No
<input type="checkbox"/> Limit	\$10,000
Equipment Breakdown	Included <sup>2</sup>

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# Property Coverages Detail

## CONTINUED

PROPERTY COVERAGES	TOTAL LIMIT OF INSURANCE
Deductible	Property Deductible
Defense	Included
Expediting Expenses	\$50,000
Hazardous Substances	\$50,000
Supplementary Payments	Included
Expediting Expenses	\$10,000
Fine Arts Coverage	\$10,000
Fire Department Service Charge	Included in STRETCH® Blanket Limit
Fire Extinguisher Recharge	Included <sup>2</sup>
Forgery Coverage (Including Credit Cards, Currency and Money Orders)	\$25,000
Fraudulent Transfer Coverage	\$10,000
Garages, Storage Buildings, and Other Appurtenant Structures	\$50,000
Glass Expense	Included <sup>2</sup>
Identity Recovery Coverage for Businessowners and Employees	
Deductible	\$250
Limit	\$15,000
Lost Wages and Child and Elder Care Expense	\$250 per day, \$5,000 per policy year
Mental Health Sublimit	\$1,500
Interruption of Computer Operations	
Period of Restoration	12 months
Policy Year Limit	\$25,000
Waiting Period	12 hours
Lease Assessment	\$2,500

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# Property Coverages Detail

## CONTINUED

PROPERTY COVERAGES	TOTAL LIMIT OF INSURANCE
Leasehold Improvements	\$25,000
Lock and Key Replacement	\$1,000
<b>S</b> Lost Keys	\$1,000
Money and Securities Coverage	
Inside the Premises Limit	\$10,000
Outside the Premises Limit	\$5,000
<b>S</b> Newly Acquired or Constructed Property	
<b>S</b> Newly Acquired or Constructed BI/EE Limit	\$250,000
<b>S</b> Newly Acquired or Constructed BPP Limit	\$500,000
<b>S</b> Non-Owned Detached Trailers	Included in STRETCH® Blanket Limit
<b>S</b> Off-Premises Utility Services - Direct Damage	\$10,000
Ordinance or Law Coverage	
Increased Cost of Construction & Demolition Costs Limit	\$25,000
Undamaged Part Limit	\$25,000
<b>S</b> Outdoor Property	\$25,000
<b>S</b> Outdoor Signs on Premises	\$10,000
<b>S</b> Pairs or Sets	Included <sup>2</sup>
<b>S</b> Paved Surfaces	\$15,000
<b>S</b> Personal Effects	Included in STRETCH® Blanket Limit
Pollutants and Contaminants Clean up and Removal	\$15,000
Preservation of Property	45 days
<b>S</b> Property Off-Premises	\$25,000
<b>S</b> Salespersons Samples	\$1,000

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# Property Coverages Detail

## CONTINUED

PROPERTY COVERAGES	TOTAL LIMIT OF INSURANCE
Spoilage	Included in STRETCH® Blanket Limit
Business Income Limit	\$10,000
Waiting Period	12 hours
Sump Overflow or Sump Pump Failure	\$15,000
Theft Damage to Building	Included <sup>2</sup>
Transit Business Income	
Limit	\$10,000
Period of Restoration	12 months
Waiting Period	None
Transit Coverage	\$10,000
Unauthorized Business Card Use	\$2,500
Valuable Papers and Records	Included in STRETCH® Blanket Limit
Valuation Changes: Commodity, Finished and Mercantile Stock	Included within Covered Property Limit (Building and/or BPP)
Water Damage, Other Liquid, Powder or Molten Material Damage	Included <sup>2</sup>

<sup>2</sup> Included within Covered Property Limit(s) (Building and/or Business Personal Property)

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# Business Liability Coverages Detail

Businesses can face many different kinds of business liability risks. And a policy can respond to them in different ways. Below you'll find a breakdown of the specific business liability coverages your policy includes. You'll also see a specific limit, which is either the maximum dollar amount or the length of time that your coverage pays.

BUSINESS LIABILITY COVERAGE	TOTAL LIMIT OF INSURANCE
Business Liability	
Liability and Medical Expenses Limit	\$1,000,000
Medical Expenses Limit	\$10,000
Damage To Premises Rented To You Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Property Damage Liability Deductible	No Deductible
Waiver of Subrogation - Blanket	Included

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# Recommended Coverages

Some excellent choices have already been made to cover your business. We know there may be other protections you'd like to know about. So take a look at these coverages you may also be interested in.

Please note that the estimated premium amounts indicated below are based on information provided during the quote process and certain assumptions including coverage limits.

WHAT IT'S CALLED	WHAT IT COSTS	WHAT IT IS	WHY YOU SHOULD ADD THIS
<b>Umbrella</b>	<b>\$336</b> per year	This adds a valuable layer of coverage over and above your primary policies. And in some cases, it also provides additional protections for losses that are not covered or excluded from your underlying coverage.	You'll get coverage that can help protect you in the event a loss costs more than your limits, or it's not covered by your underlying policies.
<b>Professional Liability</b>	<b>\$479</b> per year	This pays to protect and defend you in the event that a customer alleges your professional negligence cost them money	Even if you never make mistakes, there's always a chance that you could still face a lawsuit. Get the help you need if things go wrong.
<b>Electronic Media Liability</b>	<b>\$3</b> per year	Electronic Media Liability has a package of coverages which expands the personal and advertising injury coverages to help protect you from some internet-related personal and advertising injuries.	This extends some personal and advertising liability protections to your online activities on your website, your chat room, and your bulletin board.
<b>Data Breach</b>	<b>\$320</b> per year	This covers your costs for responding to a data breach. This can include things like hiring a forensic firm to investigate the data breach, notifying affected parties, providing credit monitoring and other costs. When Defense and Liability coverage is selected, this also covers you if you're sued as the result of a data breach. We'll pay to protect you by defending you in a lawsuit and paying a judgment up to your limit.	Any business that handles Personally Identifiable Information (PII) could be subject to a data breach claim. Even if you never use computers, you could still have paper files and other records that, if lost or stolen, can lead to a data breach. This helps take care of this cost if that happens.

## Acknowledged and Accepted By

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Signature of the Insured

Date

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# Payment Options

## DIRECT BILL OPTIONS

Choose one of these four options to pay your bill:

- **AutoPay.** Sign up for Repetitive Electronic Funds Transfer (EFT) to pay automatically from your bank account. You'll save on payment fees and get the convenience and peace of mind of automated payments.
- **Online.** Register at [thehartford.com/servicecenter](http://thehartford.com/servicecenter) to pay your bill quickly and securely.
- **Check.** Mail your check and include your payment stub in the envelope we provide.
- **Phone.** Call us toll-free 866-467-8730 to pay your bill by phone.

## PAYMENT BREAKDOWN

The charts below show how we'll bill you, according to the payment plan you select. We calculate the due date(s) and minimum amount(s) due based on the anticipated effective date of the policy. Keep in mind that the dates and amounts could change depending on when the policy is processed.

FULL PAY	
One Payment - Paid in full discount applies	
DUE DATE	PAYMENT AMOUNT
11/06/2023	\$630.54

MONTHLY OPTIONS – TOTAL ANNUAL ESTIMATED PREMIUM: \$669.65			
		With AutoPay Fee: \$5 per payment	Without AutoPay Fee: \$8 per payment
NUMBER OF PAYMENTS	DUE DATE	PAYMENT AMOUNT	PAYMENT AMOUNT
Two	11/06/2023	\$337.15 – Initial Down Payment	\$403.65 – Initial Down Payment
	04/06/2024	\$332.50	\$266.00
Four	11/06/2023	\$170.90 – Initial Down Payment	\$204.15 – Initial Down Payment
	02/06/2024	\$166.25	\$166.25
	05/06/2024	\$166.25	\$166.25
	08/06/2024	\$166.25	\$133.00
Ten	11/06/2023	\$71.15 – Initial Down Payment	\$170.94 – Initial Down Payment
	12/06/2023	\$66.50	\$55.59
	01/06/2024	\$66.50	\$55.39
	02/06/2024	\$66.50	\$55.39
	03/06/2024	\$66.50	\$55.39
	04/06/2024	\$66.50	\$55.39
	05/06/2024	\$66.50	\$55.39
	06/06/2024	\$66.50	\$55.39
	07/06/2024	\$66.50	\$55.39
	08/06/2024	\$66.50	\$55.39

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# Payment Options

## CONTINUED

NUMBER OF PAYMENTS	DUE DATE	With AutoPay Fee: \$5 per payment	Without AutoPay Fee: \$8 per payment
		PAYMENT AMOUNT	PAYMENT AMOUNT
Twelve	11/06/2023	\$71.15 – Initial Down Payment	\$71.15 – Initial Down Payment
	12/06/2023	\$59.85	\$59.85
	01/06/2024	\$59.85	\$59.85
	02/06/2024	\$59.85	\$59.85
	03/06/2024	\$59.85	\$59.85
	04/06/2024	\$59.85	\$59.85
	05/06/2024	\$59.85	\$59.85
	06/06/2024	\$59.85	\$59.85
	07/06/2024	\$59.85	\$59.85
	08/06/2024	\$59.85	\$59.85
	09/06/2024	\$59.85	\$59.85

A payment fee is assessed on each payment invoice except where prohibited by law.

Any down payment provided will be withdrawn immediately regardless of down payment date shown.

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# Mandatory disclosure: insuring against terrorism

## **Terrorism Premium: \$13**

Protecting your business means preparing for risks – even unlikely ones. Your policy includes coverage in the event of a terrorist attack. In order to offer that coverage, we are required to provide you the following disclosure about your premiums, coverage and related information.

### **Terrorism Coverage and Premium**

In accordance with the federal Terrorism Risk Insurance Act (as amended “TRIA”), we are required to make coverage available under your policy for “certified acts of terrorism.” The actual coverage provided by your policy(ies) will be limited by the terms, conditions, exclusions, limits, and other provisions of your policy(ies), as well as any applicable rules of law.

The portion of your premium attributable to terrorism coverage is shown above or in the premium section(s) of this quote proposal or binder.

### **Definition of Certified Act of Terrorism**

A “certified act of terrorism” means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of TRIA, to be an act of terrorism under TRIA. The criteria contained in TRIA for a “certified act of terrorism” include the following:

1. The act results in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to TRIA; and
2. The act results in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and
3. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States government by coercion.

### **Disclosure of Federal Share of Terrorism Losses under TRIA**

The United States Department of the Treasury will reimburse insurers for 80% of insured losses that exceed the applicable insurer deductible.

However, if aggregate industry insured losses under TRIA exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion. The United States government has not charged any premium for their participation in covering terrorism losses.

### **Cap on Insurer Liability for Terrorism Losses**

If aggregate industry insured losses attributable to “certified acts of terrorism” under TRIA exceed \$100 billion in a calendar year, and we have met, or will meet, our insurer deductible under TRIA, we shall not be liable for the payment of any portion of the amount of such losses that exceed \$100 billion. In such case, your coverage for terrorism losses may be reduced on a pro-rata basis in accordance with procedures established by the Treasury, based on its estimates of aggregate industry losses and our estimate that we will exceed our insurer deductible.

In accordance with the Treasury’s procedures, amounts paid for losses may be subject to further adjustments based on differences between actual losses and estimates.

Note to Producer on TRIA: The premium for terrorism coverage and the TRIA disclosures above must be provided to the insured or prospect at the time of quoting. If you are not using this quote proposal, you can use The Hartford’s stand-alone TRIA disclosure form for quotes and binders, which is available on the EBC or from the company.