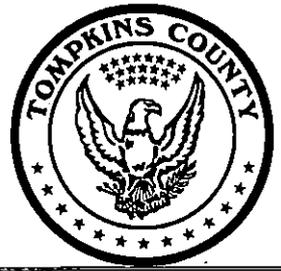




Tompkins County



CONTRACT COVER SHEET

Date Sent:

Contract #ADM16-HYDRO

Second Party: C-S CANAL HYDRO, AKA GRAVITY RENEWABLES

Originating Dept/Division: ADMIN

JK

Sender's Initials In 200 Budget? Yes No and/or Authorizing Res #

Account # VARIES

Special Instructions or Comments: FAC - AIR - HWY

FED ID# or SS#:

Dept. may keep last copy of this before sending to Adm.

Administration Use Only:

2nd PARTY APPR'D

SENT TO COMP2/23/17

ADM REC'D 2/23/17

SENT TO DEPT 2/23/17

RISK MGR APPR'D/COUNTY SIGNATURE 2/23/17

CONTRACT DATES: 1/1/16 TO 12/31/36

AMOUNT \$ hourly/per diem monthly quarterly annually \$ VARIES TOTAL

SERVICES PROVIDED: PURCHASE HYDRO-GENERATED ELECTRICITY

COMMENTS

Table with 8 columns: Gen.Lia, Auto, Addl Ins, Prof Lia, Work Co, NYS Dis, New?, LS:

Contact Person Phone

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is entered into as of this \_\_\_ day of March, 2016 (the "Effective Date") by and between Gravity Renewables, Inc. ("Gravity"), a corporation duly-organized and validly existing under the laws of the State of Delaware with a principal address at 1401 Walnut Street, Suite 220, Boulder, Colorado 80302, and Tompkins County ("Tompkins"), a municipality with an address at 125 East Court Street, Ithaca, New York, 14850. Gravity and Tompkins are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WHEREAS, On or about August 6, 2013, Tompkins County Legislature adopted Resolution 2013-117 authorizing renewable energy procurement, on behalf of Tompkins County, by the Municipal Electric and Gas Alliance of New York ("MEGA"); and

WHEREAS, Tompkins County and MEGA issued the draft request for proposals ("RFP") to supply Renewable Energy Systems for Municipalities in New York State on or about August 16, 2013, and the Final RFP on October 4, 2013; and

WHEREAS, On or about January 6, 2014, MEGA adopted a resolution accepting the negotiated Program Agreement with Gravity thereby awarding the renewable energy procurement from the RFP for small hydroelectric facilities to Gravity; and

WHEREAS, On or about January 22, 2014, Tompkins, MEGA, and Gravity entered into the Program Agreement for Supplying Remote Net Metered Renewable Energy to Participants in the Municipal Electric Gas Alliance; and

WHEREAS, Gravity and Tompkins entered into a Letter of Intent ("Letter" included as Exhibit A) on April 10, 2014, for Gravity to identify and acquire a small hydroelectric project that could meet satisfy Tompkins' intention to participate in Utility's Remote Net Metering for Non-Residential Micro-Hydroelectric Customer-Generators ("Utility Remote Net Metering Tariff"); and

WHEREAS, Tompkins provided Gravity a refundable pre-payment of two thousand five hundred (\$2,500) dollars; and

WHEREAS, On May 26, 2015, Tompkins and Gravity entered into an Option Agreement (included as Exhibit B), whereby Gravity granted an option to Tompkins to enter into this operating agreement in order to participate in the Utility Remote Net Metering Tariff; and

WHEREAS, Seneca Falls Power Corporation currently owns the hydroelectric project known as the Waterloo Hydroelectric Station ("Project") located in Seneca County, New York, and C-S Canal Hydro, LLC, an affiliate of Gravity, intends to buy the Project (together Seneca Falls Power Corporation and C-S Canal Hydro, LLC are referred to as "Project Owner"); and

WHEREAS Gravity has entered or will enter into an operating agreement with the Project Owner that owns the Project; and

WHEREAS, the Federal Energy Regulatory Commission ("FERC") issued a license or exemption for the Project, FERC Project No. P-2438, which authorizes the development, construction and operation of the Project; and

WHEREAS, Gravity is willing to grant a license pursuant to its operating agreement with Project Owner to Tompkins necessary to allow the Project's net energy hydroelectric output on the terms and conditions stated herein to be credited to Tompkins via a utility account and metering facility located at the Project further defined in Section 1 (the "License") and interconnected with New York State Electric & Gas Corporation ("Utility"); and

WHEREAS, Tompkins intends to participate in Utility's Remote Net Metering Tariff and will submit a completed preliminary interconnection application to Utility pursuant thereto; and

WHEREAS, the Parties acknowledge that Tompkins' eligibility for, and access to, monetary Remote Net Metering credits, throughout the term of this Agreement, is the premise upon which Tompkins' participation herein is conditioned; and

WHEREAS, the Parties acknowledge and agree that Tompkins is eligible for monetary Remote Net Metering credits under Public Service Law 66-j because the MEGA solicitation occurred by June 1, 2015, thus satisfying criteria and condition five (5) in the New York Public Service Commission Order in Case 14-E-0151 and Case 14-E-0422, issued and effective April 17, 2015, which states that the following Projects are eligible for Remote Net Metering after June 1, 2015: "Projects that a State, municipal, district, or local governmental entity has solicited through a Request for Proposals or a Request for Information issued in conformance with applicable law"; and

WHEREAS, Tompkins is willing to provide Data Monitoring Services (as hereinafter defined) on an as-needed basis and to allow the Project's hydroelectric power to be received by Tompkins at a net metering facility located at the Project and interconnected with the Utility; and

WHEREAS, Gravity desires to warrant that Project Owner is willing to allow the Utility to install, operate, and maintain the necessary facilities throughout the term of this Agreement, for Tompkins' net metering facility on the Project's site ("Utility's Metering Device") that will be owned and maintained by Utility pursuant to an Interconnection Agreement that Tompkins will enter into with Utility (the "Interconnection Agreement"); and

WHEREAS, Tompkins shall purchase and own that portion of the Utility's Metering Device throughout the term of this Agreement that is not owned by Utility pursuant to the Interconnection Agreement; and

WHEREAS, Gravity or Project Owner shall operate and maintain the Project and the portion of the Utility's Metering Device that is not maintained by Utility pursuant to the Interconnection Agreement for the benefit of Tompkins subject to all Applicable Laws (as defined herein);

NOW, THEREFORE, in consideration of the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1) **The License.**

a) **The License.** Subject to the terms and conditions of this Agreement, Gravity hereby grants the License to Tompkins in order for Tompkins to take beneficial ownership and control of the Project's electric utility account (the "Host Account") associated with the Utility's Metering Device (i) to participate in the Utility's Remote Net Metering Tariff; (ii) to perform any Data Monitoring Services; and (iii) to provide educational opportunities and promoting its participation in the Utility's Remote Net Metering Tariff, including the ability to stage promotional events and place and maintain promotional signage and other materials on or about the premises in such a way as to not interfere with the safe and effective operation of the Project. Gravity or Tompkins' access to the premises shall be permitted only upon reasonable notice, and during times and under conditions satisfactory to Project Owner in its reasonable discretion.

b) **Tompkins' Services to the Project.** With Gravity's assistance, Tompkins will submit a complete remote net metering application, and the Parties will address costs associated therewith. The parties agree that Tompkins may provide the following services for the Project: (i) recording and analyzing Project operational data; and (ii) recording and analyzing historical meteorological and hydrological data as it relates to and affects the Project. The foregoing services are hereby defined as the "Data Monitoring Services" for purposes of this Agreement. The Data Monitoring Services may only be modified by writing signed by both Parties. In the event Tompkins performs data collection on the Data Monitoring Services, Gravity may request said data, and Tompkins shall provide data in a reasonable amount of time.

2) **Responsibility of Utilities for Premises.** Tompkins shall not be responsible to pay any costs associated with providing water, sewer, telephone and HVAC service (collectively, "Non-Electric Utilities") to the Premises, and Gravity will ensure that Project Owner shall be responsible for all costs and charges associated with Tompkins' use of the Non-Electric Utilities at the Premises, without compensation by Tompkins.

3) **Term of Agreement.** The term shall commence on the date that the Utility Metering Device is operational ("Commencement Date") and shall continue thereafter for a period of twenty (20) years (the "Term"), with a mutual right to extend the Agreement on mutually agreeable terms for an additional five (5) years. Gravity and Tompkins shall acknowledge in writing the Commencement Date.

4) **Payment Amount:**

a) Execution of Letter. Tompkins paid a non-refundable Pre-Payment of Two

Thousand Five Hundred Dollars (\$2,500.00) to Gravity.

- b) Monthly Post-Approval Payments. The payment for hydropower received by Tompkins at the Premises for the first year commencing on the Commencement Date shall be the product of \$0.1000 ("Rate") multiplied by the number of kWh credited to Tompkins on Tompkins' monthly invoice from Utility ("Total Monthly Generation"), which will be paid to Gravity monthly in arrears ("Monthly Payment"). Within thirty (30) days of the date of Utility's monthly invoice, Tompkins shall pay the Monthly Payment to Gravity and shall include Utility's monthly invoice to support the amount of the Monthly Payment. The Rate for the second year and every year thereafter shall increase by 2.5% of the previous year's Rate. A Party may in good faith dispute the correctness of any invoice or any adjustment to any invoice under this Agreement at any time within six (6) months following the delivery of the invoice or invoice adjustment. If either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give written notice of the objection to the other Party. If the dispute is resolved in Tompkins' favor, the disputed amount shall be returned to Tompkins within ten (10) business days, along with interest thereon, from the date of Tompkins' payment, at 8%.
  - c) Monthly Payment Credit for Pre-Payments. For the second twelve (12) months following the Commencement Date, Tompkins shall deduct from the Monthly Payment a credit equal to one-twelfth (1/12) of all payments made by Tompkins pursuant to Section 4(a).
  - d) Tompkins' payment obligations hereunder are expressly conditioned on the generation of hydropower at the Premises. Tompkins shall have no obligation to make any payment hereunder during planned or unplanned outages at the Premises of any kind.
- 5) **Metering.**
- a) Total Monthly Generation shall be measured using a meter installed, owned, operated and maintained by Utility ("Metering Device").
  - b) Readings of the Metering Device shall be conclusive as to the amount of Total Monthly Generation delivered.
- 6) **Operation and Maintenance of the Project.**
- a) During the Term, Gravity hereby warrants that Project Owner shall remain responsible for the operation, maintenance and regulatory compliance of the Project in accordance with all Applicable Laws and Applicable Industry Standards (as defined herein). Tompkins shall not have any control over, nor

responsibility or liability for, the operation, maintenance and regulatory compliance of the Project. This Agreement shall not shift any liability and/or responsibility associated with the Project's operation, maintenance and regulatory compliance to Tompkins. The Parties acknowledge that Project Owner shall have the right to perform any and all acts that may be required or ordered by any Governmental Authority (as defined herein) during the Term without prior consent from either Party.

- b) Preserving Linweave Clause. Tompkins acknowledges that Project Owner, as the holder of the license or exemption for Project, shall have the authority and right to perform any and all acts ordered by the FERC regardless of any term or condition in this Agreement. Furthermore, no provisions of any agreement between Project Owner or any other party thereto, or entered into hereinafter, shall be construed to limit the performance by Project Owner or its successors, or shall prevent Project Owner from complying with the conditions of the license or exemption for Project, FERC orders, FERC delegated staff orders, and the FERC's regulations in effect from time to time.
- c) To the extent that any action taken by Project Owner pursuant to Sections 6(a) or 6(b) materially alters Tompkins' rights or obligations under this Agreement, Tompkins shall have the right to terminate this Agreement upon thirty (30) days' written notice, without penalty or further obligation.
- d) For purposes of this Agreement:
  - i. "Applicable Laws" shall mean any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license or exemption, franchise, permit, authorization, or guidance document issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Laws also include an approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity.
  - ii. "Governmental Authority" shall mean any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.
  - iii. "Applicable Industry Standards" shall mean those practices, methods, standards of safety and performance and acts engaged in or approved by persons regularly engaged in the construction, operation and maintenance of hydroelectric generation facilities as reflected in and that, in the exercise of reasonable judgment in light of the facts known

or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety and environmental protection. "Applicable Industry Standards" is not intended to mean the optimum practice, method, specification, standard or practice but rather refers to commonly used and reasonable practices and methods.

7) **Utility's Metering Device.**

- a) Gravity and Tompkins agree that the Utility's Metering Device shall be installed at the Project and must comply with all Applicable Industry Standards (as defined herein).
- b) Tompkins shall be responsible for the Host Account and, if required by the Utility, purchasing the Utility's Metering Device and shall own any portion of the Utility's Metering Device during the Term that is not owned by Utility pursuant to the Interconnection Agreement. Tompkins shall be responsible for all costs associated with replacing the Utility's Metering Device during the Term.
- c) Tompkins shall control the portion of the Utility's Metering Device that is not owned by Utility.
- d) As part of the Monthly Payment, Gravity agrees and warrants that Project Owner shall be responsible to install, operate, and maintain the portion of the Utility's Metering Device that is not owned by Utility during the Term.
- e) Tompkins has the right to inspect the Utility's Metering Device during the Term.

8) **Insurance.** Upon the Effective Date, each Party shall purchase and maintain insurance of the following types and form during the Term. Gravity shall furnish Tompkins with certificates of insurance and endorsements of all required insurance, as may be reasonably requested.

a) **Commercial General Liability (CGL):** Gravity and Project Owner each will maintain, at its own cost and expense, a minimum level of commercial general liability insurance of one million dollars (\$1,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Gravity and Project Owner each agree that it will include the other Party as an additional insured. Coverage for the additional insured shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. All insurers shall have at least an A - (VII) or better rating by A.M. Best and be qualified to do business in the jurisdiction where the Project is located. The Parties shall maintain

CGL coverage for itself and all additional insured for the Term and for at least three (3) years after the termination of this Agreement.

b) Workers' Compensation and Employers' Liability: To the extent that a Party has employees, Gravity and Project Owner will each have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Premises where the work is performed. Employers' Liability insurance shall not be less than five hundred thousand dollars (\$500,000) for injury or death each accident.

The parties understand that Tompkins is self-insured and that a certificate shall suffice as evidence of equal or better coverage.

9) Indemnification.

a) Gravity's Indemnity. To the fullest extent permitted by law, Gravity shall defend, indemnify and hold harmless Tompkins, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from Gravity's or Project Owner's use of the License and its other obligations under this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of Gravity or Project Owner, anyone directly or indirectly employed by it or them, or anyone for whom it or they may be liable. With respect to injuries to persons for whom Gravity has secured the payment of compensation as provided under the New York Workers' Compensation Law, this provision shall be construed as one by which Gravity has expressly agreed to contribution or indemnification of Tompkins within the meaning of New York Workers' Compensation Law § 11. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this paragraph. In any and all claims against Tompkins or any of its agents or employees by any employee of Gravity, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Gravity under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

b) Tompkins' Indemnity. To the fullest extent permitted by law, Tompkins shall defend, indemnify and hold harmless Gravity, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from Tompkins' use of the use of the License and its other obligations under this

Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of Tompkins or anyone directly employed by it. With respect to injuries to persons for whom Tompkins has secured the payment of compensation as provided under the New York Workers' Compensation Law, this provision shall be construed as one by which Tompkins has expressly agreed to contribution or indemnification of Gravity within the meaning of New York Workers' Compensation Law § 11. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this paragraph. In any and all claims against Gravity or any of its agents or employees by any employee of Tompkins, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Tompkins under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

10) **Entitlement to Green Attributes.**

- a) The Parties acknowledge and agree that for the term of this Agreement, the right, title, and interest in any Environmental Attributes shall be vested in Tompkins for no additional consideration.
- b) "Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time.
- c) "Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project.

11) **FERC License or Exemption.** This Agreement is expressly contingent upon Project Owner obtaining and retaining the FERC Project license or exemption under FERC Project No. P-2438. This Agreement is further expressly contingent upon Project Owner remaining the license or exemption holder under FERC Project No. P-2438. At any time during the Term, should FERC revoke the Project license or exemption, or not issue a subsequent license or exemption or relicensing order to Project Owner extending the license or exemption period for the

Project, this Agreement shall be terminated and this Agreement shall be of no further force or effect. If C-S Canal Hydro LLC does not become the FERC License or Exemption holder for the Project, Gravity retains the right to terminate this Agreement at its sole discretion by providing thirty (30) days written notice to Tompkins. Any termination pursuant to this paragraph 11 shall be without penalty or further obligation of either Party to the other. Upon termination of this Agreement under this paragraph or for any reason, Tompkins will proceed with due diligence to amend the Interconnection Agreement in order to remove Tompkins as the counter-party to the Interconnection Agreement and Tompkins will transfer ownership of the Utility's Metering Device to Gravity. If this Agreement is terminated following a breach by Gravity, Gravity shall: (i) ensure that Tompkins has access to the Premises in order for Tompkins to maintain compliance with all of its obligations under the Interconnection Agreement; and (ii) indemnify Tompkins for all costs, including reasonable attorneys' fees, that Tompkins incurs in modifying, amending, assigning or otherwise transferring the Interconnection Agreement in order to remove Tompkins as a party to the Interconnection Agreement.

12) Representations and Warranties. Each Party represents and warrants to the other Party that:

- a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- b) subject to all conditions precedent described herein, this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation and is enforceable against it in accordance with such documents' terms subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies at the discretion of the applicable court;
- c) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;
- d) it is capable of assessing the merits of and understands and accepts the terms, conditions and risks of this Agreement;
- e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its affiliates; and
- f) that the various terms, obligations, charges and fees contained in this Agreement are the result of arm's length transactions, or, to the extent that such charges and fees are not the result of arm's length transactions, represent market rate charges and fees and that the cost to the Gravity is equivalent to fair market value.
- g) that it shall reasonably cooperate with the other Party in reviewing, approving,

submitting any approval that may be needed to obtain Utility's Remote Net Metering Tariff.

Gravity further represents and warrants to Tompkins that:

- h) it has, or will have prior to the installation of the Utility's Metering Device, all the rights, interest, possession and legal authority in the License necessary and sufficient to fulfill its obligations under this Agreement during the Term;
- i) Project Owner has, or will have prior to the installation of the Utility's Metering Device, an interest in the buildings and real estate upon which the License is located, subject to all liens or encumbrances of record;
- j) there is no existing lien, encumbrance, mortgage or deed of trust on the Project affecting Tompkins' right to use the License, and Gravity shall make no action, representation, or omission to subject the Project to any such future lien, encumbrance, mortgage or deed of trust that impacts Tompkins' right to use the License as contemplated in this Agreement;
- k) Gravity or Project Owner will obtain all necessary internal consents, and all consents (if any) required by FERC and by any other agreements with third parties, to the installation, interconnection and operation of the Utility's Metering Device; and
- l) Gravity agrees that Project Owner shall operate and maintain the Project in accordance with all Applicable Laws, the applicable FERC license or exemption, Applicable Industry Standards, applicable utility tariffs, and the Interconnection Agreement.

13) **Default.**

- a) *Tompkins' Default.* In the event there is a breach by Tompkins with respect to any of the provisions of this Agreement or its obligations under it, including the payment of Monthly Payment, or in the event that any representation or warranty by Tompkins under Section 12 hereof is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, Gravity shall give Tompkins written notice of such breach. After receipt of such written notice, Tompkins shall have thirty (30) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided Tompkins shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Tompkins commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Gravity may not maintain any action or effect any remedies for default against Tompkins unless and until Tompkins has failed to cure the breach within the time periods provided in this Paragraph.

b) Gravity's Default. In the event there is a breach by Gravity with respect to any of the provisions of this Agreement or its obligations under it, or in the event that any representation or warranty by Gravity under Section 12 hereof is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, Tompkins shall give Gravity written notice of such breach. After receipt of such written notice, Gravity shall have thirty (30) days in which to cure any such breach, provided Gravity shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and Gravity commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Tompkins may not maintain any action or affect any remedies for default against Gravity unless and until Gravity has failed to cure the breach within the time periods provided in this Paragraph.

14) Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth below.

Gravity: Gravity Renewables, Inc.  
1401 Walnut Street, Suite 220  
Boulder, Colorado, 80302  
Attention: Edward Rose  
E-Mail: [ted@gravityrenewables.com](mailto:ted@gravityrenewables.com)  
Facsimile: (720) 420-9956

Tompkins: Director of Facilities  
170 Bostwick Rd.  
Ithaca, NY 14850  
E-Mail: [alemario@tomppkins-co.org](mailto:alemario@tomppkins-co.org)

With a copy to:  
County Attorney's Office  
125 E. Court St.  
Ithaca, NY 14850  
Attention: Jonathan Wood, Esq.  
E-mail: [jwood@tomppkins-co.org](mailto:jwood@tomppkins-co.org)

15) Assignment. Tompkins may assign the Agreement to a third party with the consent of Gravity, such assignment shall not be unreasonably withheld, conditioned or delayed.

Gravity shall have the right to assign any of its right, title, claim or interest in, to or under this Agreement without the prior written consent of Tompkins. The Agreement shall inure to the benefit of and be binding upon Tompkins and Gravity and, to the extent provided in any assignment or other transfer under this Section, any assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

16) **Waiver.** The waiver by either party of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of Monthly Payment hereunder by Gravity shall not be deemed to be a waiver of any preceding Event of Default or other default by Tompkins of any term, covenant or condition of this Agreement, other than the failure of Tompkins to pay the particular Monthly Payment so accepted, regardless of Gravity's knowledge of such preceding default at the time of the acceptance of such Monthly Payment.

17) **Amendment.** This Agreement may not be modified or amended, except by an agreement in writing signed by the Parties. The Parties may waive any of the conditions contained herein or any of the obligations of the other Party hereunder, but any such waiver shall be effective only if in writing and signed by the Party waiving such conditions and obligations.

18) **Payment Disputes.** If at any time the Parties are unable to agree upon the Monthly Payment set forth in Section 4, each Party will obtain an independent auditor to determine the Monthly Payment, and the Monthly Payment shall be deemed to be the average of the two audits. The Parties agree that this determination shall be conclusive and binding upon the Parties.

19) **Governing Law and Interpretation.** This Agreement shall be construed and interpreted in accordance with the laws of New York State. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa. The terms "successors and assigns" shall include the heirs, administrators, executors, successors, and assigns, as applicable, of any Party hereto.

20) **Reserved.**

21) **Integration.** It is agreed and understood that this Agreement contains all agreements, promises and understandings between Gravity and Tompkins and that no verbal or oral agreements, promises or understandings shall be binding upon either Gravity and Tompkins in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties.

22) **Partial Invalidity.** Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding.

23) **No Partnership.** Nothing contained in this Agreement shall be construed to

create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more Parties in this Agreement.

24) **Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection therewith. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement shall be binding upon the Parties hereto nor shall affect or be effective to interpret, change, or restrict the provisions of this Agreement. The Parties agree to negotiate in good faith any modifications to this Agreement that may be necessary for Tompkins to participate in Utility's Remote Net Metering Tariff.

25) **Change in Law**

a) The Parties acknowledge that the basis of the bargain set forth herein is Tompkins' expectation that monetized Remote Net Metering credits, as set forth in NY Public Service Law section 66-j and interpreted in various NYS Public Service Commission orders, are available to Tompkins throughout the Term of this Agreement. In the event there is a Change in Law that is applicable to the operation of the Project, the sale or use of the Total Monthly Generation, Tompkins' eligibility for, and/or the valuation of, any Remote Net Metering credits applicable to the Total Monthly Generation, or any other obligation of either party hereunder, and compliance with the Change in Law materially limits Tompkins' ability to utilize the Total Monthly Generation or receive the economic benefits associated with the use of the Total Monthly Generation, and the Remote Net Metering credits applicable thereto, in the manner intended under this Agreement, Gravity and Tompkins shall promptly meet and confer and negotiate, in good faith, possible changes to the Agreement including, for example and without limitation, how to restructure the Agreement to ensure that the Total Monthly Generation is available for use by Tompkins at the Premises or other Tompkins site(s) or the Total Monthly Generation is made available for sale to the market for Tompkins' benefit. Notwithstanding the obligations in this preceding sentence, neither party shall be obligated to accept any material reduction in economic benefits to which it is entitled under this Agreement.

b) For purposes of this agreement, "Change in Law" means that after the Commencement Date, an Applicable Law, including, specifically, any law or tariff authorizing Remote Net Metering, is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws or material changes in the interpretation of an Applicable Law.

26) **Authority.** Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any

other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

27) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

28) **Non-Circumvention**. The Parties agree that one of purposes of this Agreement is the introduction of Tompkins to Gravity's existing business relationships concerning hydroelectric projects ("Projects"). Tompkins hereby agrees not to circumvent Gravity's relationships with respect to such Projects during the term of this Agreement and for two years thereafter.

29) **Marketing**. Gravity and Tompkins have the right to take pictures of the Project and use the pictures and this Agreement for marketing or promotional plans during the Term. Gravity or Tompkins shall have limited access to the Project for the purpose of marketing, promoting educational opportunities and providing operational assistance. Any activities requiring access will be approved by Gravity and performed in such a way as to not interfere with the safe and effective operation of the Project. Access shall be permitted only upon reasonable notice, and during times and under conditions satisfactory to Gravity.

30) **Confidentiality**. The Parties understand that certain information provided by Gravity to Tompkins may be considered confidential by Gravity, and the disclosure of Confidential Information will result in Gravity being irreparably injured. Gravity shall identify such information in writing. As such, the Parties will use best efforts to keep such Confidential Information confidential. Specifically, in response to a request under the New York State Freedom of Information Law ("FOIL"), Tompkins can disclose the Confidential Information; provided however, that Tompkins:

- a) Prior to such disclosure, may acknowledge said FOIL request as required by law but shall not release the Confidential Information with the initial acknowledgment letter;
- b) Prior to such disclosure, shall notify Gravity promptly, and in no case more than five (5) days after receiving such FOIL request, to give Gravity time to contest the FOIL request;
- c) Cooperate with Gravity to respond to such FOIL request;
- d) May provide such disclosure if Gravity does not respond in writing to Tompkins within ten (10) days after notification of such FOIL request.

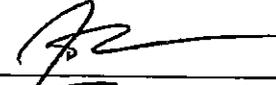
31) **Executory Clause**. It is understood by and between the parties hereto that this Agreement shall be deemed executory to the extent of the monies available to Tompkins and no liability on account thereof shall be incurred by Tompkins beyond monies available for the purpose thereof.

[signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

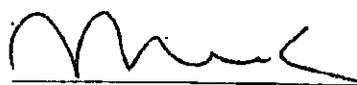
"Tompkins":

Tompkins County

By:   
Name: Joe C. Marletta  
Its: County Administrator

"Gravity":

Gravity Renewables, Inc.

By:   
Name: Mark J. Bourgeois  
Its: COO

**Exhibit A**

**Tompkins Gravity Letter of Intent**

**[Letter of Intent]**

April 10, 2014

Joe Mareane  
Tompkins County Administrator  
County Administration  
125 East Court Street  
Old Jail Building, 3<sup>rd</sup> Floor  
Ithaca, NY 14850

Re: Non-Binding Letter of Intent for Remote Net-Metering Agreement

Dear Mr. Mareane,

Gravity Renewables, Inc. (Gravity Renewables) is pleased to provide you with this Non-Binding Letter of Intent (LOI) regarding a small-scale hydropower facility eligible for remote net metering in the Tompkins County region (the "Facility.")

Gravity Renewables is responding to Tompkins County's interest in the long-term purchase of the energy generated by the Facility under the terms and conditions negotiated by the Municipal Electric and Gas Alliance (MEGA) Renewable Energy program. The MEGA Renewable Energy Program procurement was authorized by Tompkins County Legislature Resolution 2013-117 on August 6, 2013. Program agreements were approved by the MEGA board, forwarded to your office and executed on January 6, 2014.

Under the Remote Net-Metering Agreement, Gravity Renewables will own and operate the small hydro facility while Tompkins County will realize the benefits of the Remote Net Metering Credits generated by it.

The final approval and execution of the binding Remote Net-Metering Agreement will be completed once Gravity Renewables has reached definitive agreement to acquire the Facility and will be according to NY State Municipal Procurement Law and subject to all approvals in keeping with Tompkins County procedures.

Other than the refundable pre-payment due under the terms of this LOI, Tompkins County will incur no costs until the facility has been recommissioned under New York's remote net-metering regulations.

For a period of five years; each party agrees not to use any confidential information derived from the disclosing party to its advantage for its own business or affairs, unless the same is pursuant to a joint written approval. Further, nothing in this Agreement shall preclude the parties from pursuing its own business opportunities of a non-similar nature, in locations or at facilities not the subject of either parties' or client's proposed projects or service areas.

A handwritten signature in black ink, appearing to be the initials 'JM' or similar, located in the bottom right corner of the page.

Please see the following timeline and agreement terms:

**Project Timeline**

Milestone	Target Date/Duration	Pre Payment Schedule
Sign LOI	April 15, 2014	\$2,500 *
Gravity Renewables Complete Negotiations with Plant Owner	1 - 3 months	
Gravity Renewables Presents Project Package to Tompkins County (Draft Agreement, Final Terms, Project Description)	2 weeks	
Tompkins County Submits to Committee	2 weeks	
Tompkins County to Submit to Legislature for Vote and Execution	2 weeks	
Gravity Renewables applies to FERC for license transfer	TBD	
Gravity Renewables and Tompkins County submit Utility Net Metering Application	TBD	
Final Commissioning **	TBD	

\* The parties will execute the attached Exhibit A

\*\* Gravity Renewables and County will pursue all target milestones diligently and understand that the process, including FERC approval and commissioning of net metering facilities could take up to 24 months.

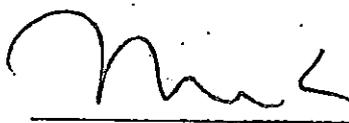
## Agreement Terms

Proposed Remote Net-Metering Agreement		MEGA Model Lease Agreement
Transaction Structure		
Term (Years)	Text	20
Est. Net Metering Credit Value to Tompkins County <sup>1</sup> (\$/kWh)		\$0.096
Tompkins County Monthly Payment to Gravity Renewables (\$/kWh) <sup>2</sup>		\$0.080
Annual Escalation on Gravity Renewables Payment (%/yr)		2.0%
Est. Average Annual Production (kWh/year)		4,800,000
<b>Additional Benefits:</b>		
Renewable Energy Certificates (RECs) Per Year		4,800
Environmental: Annual Carbon Reduction (lbs) <sup>3</sup>		7,293,985
Local Economic Development: Jobs (FTE)		1-2

By signing this document, the parties acknowledge that this non-binding LOI is an expression of intent only and contains estimates and projections based on information currently known and available. As such, the parties agree that this LOI is not a binding agreement, and that neither party shall be obligated to the other unless and until a Remote Net-Metering Agreement is executed.

Non-Binding Letter of Intent Approved by:

  
 \_\_\_\_\_  
 Joe Mareane  
 County Administrator,  
 Tompkins County

  
 \_\_\_\_\_  
 Date Mark J. Boumansour  
 Chief Operating Officer,  
 Gravity Renewables

4-14-2014

Date

<sup>1</sup> Estimated – 2013 12 month average

<sup>2</sup> Subject to execution of a definitive agreement

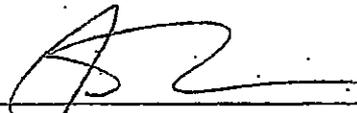
<sup>3</sup> EPA Greenhouse Gas Equiv. Calculator.

<http://www.epa.gov/cleanenergy/energy-resources/calculator.html#results>

AGREEMENT

Tompkins County ("County") and Gravity Renewables Inc. ("Gravity") for good and valuable consideration agree to the following terms:

1. Within ten days from the execution of this agreement Tompkins County shall pay to Gravity \$2,500 as a refundable prepayment. Upon final commissioning of the project referenced in the letter of intent dated April 10, 2014, County will be credited \$625 a month during the second 12 months of operation. The prepayment is fully refundable if Gravity is unable to perform the activities outlined in the letter of intent.
2. Gravity agrees to make diligent efforts to acquire the site needed to perform the functions described in the letter of intent. If it is able to gain ownership or control of the site it will make the site available to County for net-metering as described in the letter of intent. The County has the exclusive right to accept the project in accord with the terms of the letter of intent. Only if the County rejects the agreement outlined in the letter of intent will Gravity make the site available to other potential parties.

  
\_\_\_\_\_  
Joe Mareane                      Date  
County Administrator,  
Tompkins County

  
\_\_\_\_\_  
Mark J. Boumansour              Date  
Chief Operating Officer,  
Gravity Renewables

**Exhibit B**

**Tompkins Gravity Option Agreement**

**[Option Agreement]**

## OPTION TO OPERATING AGREEMENT

This Option to Operating Agreement ("Agreement") is entered into as of this 26 day of May, 2015 (the "Effective Date") by and between Gravity Renewables, Inc. ("Company"), a corporation duly organized and validly existing under the laws of the State of Delaware with a principal address at 1401 Walnut Street, Suite 220, Boulder, Colorado 80302, and Tompkins County ("Tompkins"), a municipality with an address at 125 East Court Street, Ithaca, New York, 14850. The Company and Tompkins are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

WHEREAS, the Municipal Electric and Gas Alliance of New York Renewable Energy procurement was authorized by Tompkins County Legislature Resolution 2013-117 on August 6, 2013; and

WHEREAS, Company and Tompkins entered into a Letter of Intent ("Letter") on April 10, 2014, for the Company to identify and acquire a small hydroelectric project that could meet satisfy Tompkins' intention to participate in Utility's Remote Net Metering for Non-Residential Micro-Hydroelectric Customer-Generators ("Utility Remote Net Metering Tariff"); and

WHEREAS, Tompkins provided the Company a refundable pre-payment of two thousand five hundred (\$2,500) dollars; and

WHEREAS, Company intends to acquire the real property and associated rights associated with a hydroelectric project known as the Waterloo Hydroelectric Station ("Project") located in Waterloo, New York; and

WHEREAS, Company is willing to grant certain interests to allow the Project's hydroelectric power to be received by Tompkins at a metering facility located at the Project and interconnected with New York State Electric and Gas ("Utility"); and

WHEREAS, Company will construct, operate, and maintain the necessary controls and facilities, throughout the term of this Agreement, for Tompkins' net metering facility on the Project's site (hereinafter, the "Host Net Metering Facilities") except for any portion of the Host Net Metering Facilities that will be owned and maintained by Utility pursuant to an interconnection agreement that Tompkins will enter into with Utility (the "Interconnection Agreement"); and

WHEREAS, Tompkins shall purchase and own that portion of the Host Net Metering Facilities throughout the term of this Agreement that is not owned by Utility pursuant to the Interconnection Agreement; and

WHEREAS, the Company shall operate and maintain the Project and the portion of the Host Net Metering Facilities that is not maintained by Utility pursuant to the Interconnection Agreement for the benefit of the Tompkins subject to all Applicable Laws (as defined in the Operating Agreement); and

NOW, THEREFORE, in consideration of the sum of Two Thousand Five Hundred Dollars (\$2,500.00) that has been paid to Company, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby grants to Tompkins the right and option to the certain interests pursuant to the Operating Agreement, for the term and in accordance with the covenants and conditions set forth herein.

1) **Option.** Company hereby grants an option to Tompkins to enter into the Operating Agreement, exercisable by written notice (the "Option Exercise Notice") to Company at any time during the Option Term (defined below in Section 2).

2) **Option Term.** The Option Term shall be one and half (1.5) years from the Effective Date of the Agreement.

3) **Rights and Obligations.** During the Option Term, Tompkins and Company may submit a completed preliminary interconnection application to Utility..

4) **Term of Operating Agreement.** The Term shall commence on the date that the Host Net Metering Facilities are operational (the "Commencement Date") and shall continue thereafter for a period of twenty (20) years with a mutual right to extend the Agreement on mutually agreeable terms for an additional five (5) years.

5) **Price.** The payment for hydropower received by Customer at the Premises for the first year commencing on the Commencement Date shall be \$0.1000 ("Rate") times the number of kWh credited to Customer on Customer's monthly invoice from Utility ("Total Monthly Generation"), which will be paid to Gravity monthly in arrears ("Monthly Payment"). The Rate for the second year and every year thereafter shall increase by 2.5% of the previous year's Rate.

6) **Operation and Maintenance of the Project.** During the Term, Company shall remain responsible for the operation, maintenance and regulatory compliance of the Project in accordance with all Applicable Laws and Applicable Industry Standards (as defined in the Operating Agreement). Tompkins shall not have any control over, nor responsibility for, the operation, maintenance and regulatory compliance of the Project. This Agreement shall not shift any liability and/or responsibility associated with the Project's operation, maintenance and regulatory compliance to Tompkins. Company reserves the right to perform any and all acts that may be required or ordered by any Governmental Authority (as defined in the Operating Agreement) during the Term without prior consent from the Tompkins.

7) **Host Net Metering Facilities.** Company and Tompkins agree that the Host Net Metering Facilities shall be installed at the Project and must comply with all Applicable Industry Standards.

8) **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested;

postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth below.

Company: Gravity Renewables, Inc.  
1401 Walnut Street, Suite 220  
Boulder, Colorado, 80302  
Attention: Ted Rose  
E-Mail: [ted@gravityrenewables.com](mailto:ted@gravityrenewables.com)  
Facsimile: (303) 957-2362

Tompkins: Tompkins County  
County Administration  
125 East Court Street  
Old Jail Building, 3<sup>rd</sup> Floor  
Attention: Jonathan Wood  
E-Mail: [jwood@tom-pkins-co.org](mailto:jwood@tom-pkins-co.org)  
Facsimile:

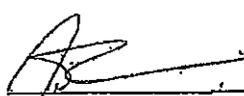
9) Assignment. This Agreement may not be sold, assigned, or transferred by Tompkins without the written consent of the Company, which such consent will not be unreasonably withheld, delayed or conditioned.

10) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

"Tompkins":

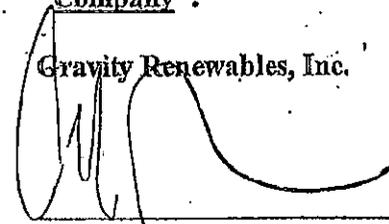
Tompkins County

By: 

Name: JOE C. MARZULLI  
Its: COUNTY ADMINISTRATOR

"Company":

Gravity Renewables, Inc.

By: 

Name: Edward Rose  
Its: Chief Executive Officer

APPENDIX A

NEW YORK STATE  
STANDARDIZED CONTRACT  
FOR INTERCONNECTION OF NEW DISTRIBUTED GENERATION UNITS  
WITH CAPACITY OF 2 MW OR LESS CONNECTED IN PARALLEL WITH  
UTILITY DISTRIBUTION SYSTEMS

**Customer Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**Utility Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Unit Application/File No. \_\_\_\_\_

Utility Account Number: \_\_\_\_\_

**DEFINITIONS**

**Dedicated Facilities** means the equipment and facilities on the Utility's system necessary to permit operation of the Unit in parallel with the Utility's system.

**Delivery Service** means the services the Utility may provide to deliver capacity or energy generated by Customer to a buyer to a delivery point(s), including related ancillary services.

**"Net energy metering"** means the use of a net energy meter to measure, during the billing period applicable to a customer-generator, the net amount of electricity supplied by an electric corporation and provided to the corporation by a customer-generator.

**"SIR"** means the New York State Standardized Interconnection Requirements for new distributed generation units with a nameplate capacity of 2 MW or less connected in parallel with the Utility's distribution system

**"Unit"** means the distributed generation Unit with a nameplate capacity of 2 MW or less located on the Customer's premises at the time the Utility approves such Unit for operation in parallel with the Utility's system. This Agreement relates only to such Unit, but a new agreement shall not be required if the Customer makes physical alterations to the Unit that do not result in an increase in its nameplate generating capacity. The nameplate generating capacity of the Unit shall not exceed 2 MW, except for fuel cell electric generating units which shall not exceed 1.5 MW and farm waste generating units shall not exceed 1.0 MW.

## **I. TERM AND TERMINATION**

**1.1 Term:** This Agreement shall become effective when executed by both Parties and shall continue in effect until terminated.

**1.2 Termination:** This Agreement may be terminated as follows:

- a. The Customer may terminate this Agreement at any time, by giving the Utility sixty (60) days' written notice.
- b. Failure by the Customer to seek final acceptance by the Utility within twelve (12) months after completion of the utility construction process described in the SIR shall automatically terminate this Agreement.
- c. Either Party may, by giving the other Party at least sixty (60) days' prior written notice, terminate this Agreement in the event that the other Party is in default of any of the material terms and conditions of this Agreement. The terminating Party shall specify in the notice the basis for the termination and shall provide a reasonable opportunity to cure the default.
- d. The Utility may, by giving the customer at least sixty (60) days' prior written notice, terminate this Agreement for cause. The Customer's non-compliance with an upgrade to the SIR, unless the Customer's installation is "grandfathered," shall constitute good cause.

**1.3 Disconnection and Survival of Obligations:** Upon termination of this Agreement the Unit will be disconnected from the Utility's electric system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

**1.4 Suspension:** This Agreement will be suspended during any period in which the Customer is not eligible for delivery service from the Utility

## **II. SCOPE OF AGREEMENT**

**2.1 Scope of Agreement:** This Agreement relates solely to the conditions under which the Utility and the Customer agree that the Unit may be interconnected to and operated in parallel with the Utility's system.

**2.2 Electricity Not Covered:** The Utility shall have no duty under this Agreement to account for, pay for, deliver, or return in kind any electricity produced by the Facility and delivered into the Utility's System unless the system is net metered as described in Public Service Law Sections 66-j or 66-l.

### III. INSTALLATION, OPERATION AND MAINTENANCE OF UNIT

**3.1 Compliance with SIR:** Subject to the provisions of this Agreement, the Utility shall be required to interconnect the Unit to the Utility's system, for purposes of parallel operation, if the Utility accepts the Unit as in compliance with the SIR. The Customer shall have a continuing obligation to maintain and operate the Unit in compliance with the SIR.

**3.2 Observation of the Unit - Construction Phase:** The Utility may, in its discretion and upon reasonable notice, conduct reasonable on-site verifications during the construction of the Unit. Whenever the Utility chooses to exercise its right to conduct observations herein it shall specify to the Customer its reasons for its decision to conduct the observation. For purposes of this paragraph and paragraphs 3.3 through 3.5, the term "on-site verification" shall not include testing of the Unit, and verification tests shall not be required except as provided in paragraphs 3.3 and 3.4.

**3.3 Observation of the Unit - Ten-day Period:** The Utility may conduct on-site verifications of the Unit and observe the execution of verification testing within a reasonable period of time, not exceeding ten (10) business days after system installation. The applicant's facility will be allowed to commence parallel operation upon satisfactory completion of the verification test. The applicant must have complied with and must continue to comply with all contractual and technical requirements.

**3.4 Observation of the Unit - Post-Ten-day Period:** If the Utility does not perform an on-site verification of the Unit and observe the execution of verification testing within the ten-day period, the Customer will send the Utility within five (5) days of the verification testing a written notification certifying that the Unit has been installed and tested in compliance with the SIR, the utility-accepted design and the equipment manufacturer's instructions. The Customer may begin to produce energy upon satisfactory completion of the verification test. After receiving the verification test notification, the Utility will either issue to the Customer a formal letter of acceptance for interconnection, or may request that the applicant and utility set a date and time to conduct an on-site verification of the Unit and make reasonable inquiries of the Customer, but only for purposes of determining whether the verification tests were properly performed. The Customer shall not be required to perform the verification tests a second time, unless irregularities appear in the verification test report or there are other objective indications that the tests were not properly performed in the first instance.

**3.5 Observation of the Unit - Operations:** The Utility may conduct on-site verification of the operations of the Unit after it commences operations if the Utility has a reasonable basis for doing so based on its responsibility to provide continuous and reliable utility service or as authorized by the provisions of the Utility's Retail Electric Tariff relating to the verification of customer installations generally.

**3.6 Costs of Dedicated Facilities:** During the term of this Agreement, the Utility shall design, construct and install the Dedicated Facilities. The Customer shall be responsible for paying the incremental capital cost of such Dedicated Facilities attributable to the

Customer's Unit. All costs associated with the operation and maintenance of the Dedicated Facilities after the Unit first produces energy shall be the responsibility of the Utility.

#### IV. DISCONNECTION OF THE UNIT

**4.1 Emergency Disconnection:** The Utility may disconnect the Unit, without prior notice to the Customer (a) to eliminate conditions that constitute a potential hazard to Utility personnel or the general public; (b) if pre-emergency or emergency conditions exist on the Utility system; (c) if a hazardous condition relating to the Unit is observed by a Utility inspection; or (d) if the Customer has tampered with any protective device. The Utility shall notify the Customer of the emergency if circumstances permit.

**4.2 Non-Emergency Disconnection:** The Utility may disconnect the Unit, after notice to the responsible party has been provided and a reasonable time to correct, consistent with the conditions, has elapsed, if (a) the Customer has failed to make available records of verification tests and maintenance of his protective devices; (b) the Unit system interferes with Utility equipment or equipment belonging to other customers of the Utility; (c) the Unit adversely affects the quality of service of adjoining customers.

**4.3 Disconnection by Customer:** The Customer may disconnect the Unit at any time.

**4.4 Utility Obligation to Cure Adverse Effect:** If, after the Customer meets all interconnection requirements, the operations of the Utility are adversely affecting the performance of the Unit or the Customer's premises, the Utility shall immediately take appropriate action to eliminate the adverse effect. If the Utility determines that it needs to upgrade or reconfigure its system the Customer will not be responsible for the cost of new or additional equipment beyond the point of common coupling between the Customer and the Utility.

#### V. ACCESS

**5.1 Access to Premises:** The Utility shall have access to the disconnect switch of the Unit at all times. At reasonable hours and upon reasonable notice consistent with Section III of this Agreement, or at any time without notice in the event of an emergency (as defined in paragraph 4.1), the Utility shall have access to the Premises.

**5.2 Utility and Customer Representatives:** The Utility shall designate, and shall provide to the Customer, the name and telephone number of a representative or representatives who can be reached at all times to allow the Customer to report an emergency and obtain the assistance of the Utility. For the purpose of allowing access to the premises, the Customer shall provide the Utility with the name and telephone number of a person who is responsible for providing access to the Premises.

**5.3 Utility Right to Access Utility-Owned Facilities and Equipment:** If necessary for the purposes of this Agreement, the Customer shall allow the Utility access to the Utility's equipment and facilities located on the Premises. To the extent that the Customer does not

own all or any part of the property on which the Utility is required to locate its equipment or facilities to serve the Customer under this Agreement, the Customer shall secure and provide in favor of the Utility the necessary rights to obtain access to such equipment or facilities, including easements if the circumstances so require.

## **VI. DISPUTE RESOLUTION**

**6.1 Good Faith Resolution of Disputes:** Each Party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

**6.2 Mediation:** If a dispute arises under this Agreement, and if it cannot be resolved by the Parties within ten (10) business days after written notice of the dispute, the parties agree to submit the dispute to mediation by a mutually acceptable mediator, in a mutually convenient location in New York State, in accordance with the then current CPR Institute for Dispute Resolution Mediation Procedure, or to mediation by a mediator provided by the New York Public Service Commission. The Parties agree to participate in good faith in the mediation for a period of up to 90 days. If the Parties are not successful in resolving their disputes through mediation, then the parties may refer the dispute for resolution to the New York Public Service Commission, which shall maintain continuing jurisdiction over this Agreement.

**6.3 Escrow:** If there are amounts in dispute of more than two thousand dollars (\$2,000), the Customer shall either place such disputed amounts into an independent escrow account pending final resolution of the dispute in question, or provide to the Utility an appropriate irrevocable standby letter of credit in lieu thereof.

## **VII. INSURANCE**

**7.1** The Customer is not required to provide general liability insurance coverage as part of this Agreement, the SIR, or any other Utility requirement. Due to the risk of incurring damages however, the Public Service Commission recommends that every distributed generation customer protect itself with insurance.

**7.2 Effect:** The inability of the Utility to require the Customer to provide general liability insurance coverage for operation of the Unit is not a waiver of any rights the Utility may have to pursue remedies at law against the Customer to recover damages.

## **VIII. MISCELLANEOUS PROVISIONS**

**8.1 Beneficiaries:** This Agreement is intended solely for the benefit of the Parties hereto, and if a Party is an agent, its principal. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any other person.

**8.2 Severability:** If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent

jurisdiction, such portion or provision shall be deemed separate and independent, and the remainder of this Agreement shall remain in full force and effect.

**8.3 Entire Agreement:** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior agreements or understandings, whether verbal or written.

**8.4 Waiver:** No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. In the event that any agreement or covenant herein shall be breached and thereafter waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**8.5 Applicable Law:** This Agreement shall be governed by and construed in accordance with the law of the State of New York.

**8.6 Amendments:** This Agreement shall not be amended unless the amendment is in writing and signed by the Utility and the Customer.

**8.7 Force Majeure:** For purposes of this Agreement, "Force Majeure Event" means any event: (a) that is beyond the reasonable control of the affected Party; and (b) that the affected Party is unable to prevent or provide against by exercising reasonable diligence, including the following events or circumstances, but only to the extent they satisfy the preceding requirements: acts of war, public disorder, insurrection, or rebellion; floods, hurricanes, earthquakes, lightning, storms, and other natural calamities; explosions or fires; strikes, work stoppages, or labor disputes; embargoes; and sabotage. If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, such Party will promptly notify the other Party in writing, and will keep the other Party informed on a continuing basis of the scope and duration of the Force Majeure Event. The affected Party will specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the affected Party is taking to mitigate the effects of the event on its performance. The affected Party will be entitled to suspend or modify its performance of obligations under this Agreement, other than the obligation to make payments then due or becoming due under this Agreement, but only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts. The affected Party will use reasonable efforts to resume its performance as soon as possible.

**8.8 Assignment to Corporate Party:** At any time during the term, the Customer may assign this Agreement to a corporation or other entity with limited liability, provided that the Customer obtains the consent of the Utility. Such consent will not be withheld unless the Utility can demonstrate that the corporate entity is not reasonably capable of performing the obligations of the assigning Customer under this Agreement.

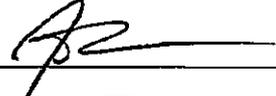
**8.9 Assignment to Individuals:** At any time during the term, the Customer may assign this Agreement to another person, other than a corporation or other entity with limited

liability, provided that the assignee is the owner, lessee, or is otherwise responsible for the Unit.

**8.10 Permits and Approvals:** Customer shall obtain all environmental and other permits lawfully required by governmental authorities prior to the construction and for the operation of the Unit during the term of this Agreement.

**8.11 Limitation of Liability:** Neither by inspection, if any, or non-rejection, nor in any other way, does the Utility give any warranty, express or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Customer or leased by the Customer from third parties, including without limitation the Unit and any structures, equipment, wires, appliances or devices appurtenant thereto.

**ACCEPTED AND AGREED:**

Customer Signature: 

Printed Name: JOE C. MARSTON

Title: COUNTY ADMINISTRATOR

Date: 3/23/16

Utility Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

APPENDIX B

NEW YORK STATE STANDARDIZED APPLICATION  
FOR ATTACHMENT OF INVERTER BASED PARALLEL  
GENERATION EQUIPMENT  
TO THE ELECTRIC SYSTEM OF

Utility: \_\_\_\_\_

Customer:

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_ Municipality: \_\_\_\_\_

Utility Account Number: \_\_\_\_\_ Utility Meter No.: \_\_\_\_\_

Agent (if any):

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_ Municipality: \_\_\_\_\_

Consulting Engineer or Contractor:

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Existing Electric Service:

Capacity: \_\_\_\_\_ Amperes Voltage: \_\_\_\_\_ Volts

Service Character: ( ) Single Phase ( ) Three Phase

Location of Protective Interface Equipment on Property:

(include address if different from customer address)

\_\_\_\_\_

**Energy Producing Inverter Information:**

Total AC Nameplate Rating of All Inverters: \_\_\_\_\_

Inverter

Inverter or \_\_\_\_\_, to UL 1741 ( most Current version)  
( ) Yes ( ) No; attach product literature

Manufacturer: \_\_\_\_\_ Model: \_\_\_\_\_

Quantity: \_\_\_\_\_

Rating per inverter: \_\_\_\_\_ kW

Type: \_\_\_\_\_ ( ) Forced Commutated ( ) Line Commutated ( ) Utility Interactive ( ) Stand Alone

Rated Output: \_\_\_\_\_ Amps \_\_\_\_\_ Volts

Ramp Rate:

Method of Grounding ( ) Grounded ( ) Ungrounded

Quantity of Inverters \_\_\_\_\_

If there is more than one inverter of different types or manufacturers please provide information on separate sheet.

If Applicable:

Step Up Transformer Winding Configuration: Wye-Wye ( ) Wye-Delta ( ) Delta - Wye ( )

Other existing DG such as stand-by emergency generators, other renewable technologies, microturbines, hydro, fuel cells, battery storage, etc. ( ) Yes ( ) No.

If Yes provide information about existing generation on separate sheet and include detail on one-line diagram.

Signature:

\_\_\_\_\_  
CUSTOMER/AGENT SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

APPENDIX C

NEW YORK STATE STANDARDIZED APPLICATION  
FOR ATTACHMENT OF NON-INVERTER BASED PARALLEL GENERATION  
EQUIPMENT TO THE ELECTRIC SYSTEM OF

Utility: \_\_\_\_\_

Customer:

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_ Municipality: \_\_\_\_\_

Utility Account Number: \_\_\_\_\_ Utility Meter No.: \_\_\_\_\_

Agent (if any):

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_ Municipality: \_\_\_\_\_

Consulting Engineer or Contractor:

Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Estimated In-Service Date: \_\_\_\_\_

Existing Electric Service:

Capacity: \_\_\_\_\_ Amperes Voltage: \_\_\_\_\_ Volts

Service Character: ( ) Single Phase ( ) Three Phase

Secondary 3 Phase Transformer Connection ( ) Wye ( ) Delta

Location of Protective Interface Equipment on Property:

(include address if different from customer address)

\_\_\_\_\_

**Energy Producing Equipment Information:**

Manufacturer: \_\_\_\_\_  
 Model No. \_\_\_\_\_ Version No. \_\_\_\_\_  
 ( ) Synchronous ( ) Induction ( ) Other \_\_\_\_\_  
 Rating: \_\_\_\_\_ kW Rating: \_\_\_\_\_ kVA  
 Rated Output: \_\_\_\_\_ VA Rated Voltage: \_\_\_\_\_ Volts  
 Rate Frequency: \_\_\_\_\_ Hertz Rated Speed: \_\_\_\_\_ RPM  
 Efficiency: \_\_\_\_\_ % Power Factor: \_\_\_\_\_ %  
 Rated Current: \_\_\_\_\_ Amps Locked Rotor Current: \_\_\_\_\_ Amps  
 Synchronous Speed: \_\_\_\_\_ RPM Winding Connection: \_\_\_\_\_  
 Min. Operating Freq./Time: \_\_\_\_\_  
 Generator Connection: ( ) Delta ( ) Wye ( ) Wye Grounded  
 System Tested to UL 1741 (most Current version) (Total System): ( ) Yes ( ) No; attach product literature  
 Equipment Tested to UL 1741 (most Current version) (i.e. Protection System): ( ) Yes ( ) No; attach product literature  
 Three line Diagram attached: ( ) Yes  
 Verification Test Plan attached: ( ) Yes  
 If applicable, Certification to UL 1741 attached: ( ) Yes

**For Synchronous Machines:**

Submit copies of the Saturation Curve and the Vee Curve  
 ( ) Salient ( ) Non-Salient  
 Torque: \_\_\_\_\_ lb-ft Rated RPM: \_\_\_\_\_  
 Field Amperes: \_\_\_\_\_ at rated generator voltage and current  
 and \_\_\_\_\_ % PF over-excited  
 Type of Exciter: \_\_\_\_\_  
 Output Power of Exciter: \_\_\_\_\_  
 Type of Voltage Regulator: \_\_\_\_\_  
 Direct-axis Synchronous Reactance ( $X_d$ ) \_\_\_\_\_ ohms  
 Direct-axis Transient Reactance ( $X'_d$ ) \_\_\_\_\_ ohms  
 Direct-axis Sub-transient Reactance ( $X''_d$ ) \_\_\_\_\_ ohms

**For Induction Machines:**

Rotor Resistance ( $R_r$ ) \_\_\_\_\_ ohms Exciting Current \_\_\_\_\_ Amps  
 Rotor Reactance ( $X_r$ ) \_\_\_\_\_ ohms Reactive Power Required:  
 Magnetizing Reactance ( $X_m$ ) \_\_\_\_\_ ohms \_\_\_\_\_ VARs (No Load)  
 Stator Resistance ( $R_s$ ) \_\_\_\_\_ ohms \_\_\_\_\_ VARs (Full Load)  
 Stator Reactance ( $X_s$ ) \_\_\_\_\_ ohms  
 Short Circuit Reactance ( $X''_d$ ) \_\_\_\_\_ ohms Phases:  
 Frame Size: \_\_\_\_\_ Design Letter: \_\_\_\_\_ ( ) Single  
 Temp. Rise: \_\_\_\_\_ °C. ( ) Three-Phase

If Applicable:

Step Up Transformer Winding Configuration: Wye-Wye ( ) Wye-Delta ( ) Delta-Wye ( )

Signature:

\_\_\_\_\_  
CUSTOMER/AGENT SIGNATURE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE