

CHPE LLC AND CHPE PROPERTIES, INC.

AND

ALBANY COUNTY, NEW YORK

**ROAD USE AND CROSSING
AGREEMENT FOR THE
CHAMPLAIN HUDSON POWER EXPRESS ELECTRIC
TRANSMISSION CABLE SYSTEM CROSSING**

DATED _____, 2023

ADDRESS: Harold L. Joyce County Office Building, 112 State Street, Albany, NY 12207

COUNTY/CITY/VILLAGE/TOWN: Albany County

COUNTY: Albany

STATE: New York

ROAD USE AND CROSSING AGREEMENT

This Road Use and Crossing Agreement (“Agreement”), entered into this ___ day of ____, 2023 by and between CHPE LLC and its wholly-owned subsidiary CHPE PROPERTIES, INC. (collectively, “CHPE”) having an office located at 623 Fifth Avenue, 20th Floor New York, New York 10022 and the County of Albany, New York (the “County”) having an office at Harold L. Joyce County Office Building, 112 State Street, Albany, NY 12207.

RECITALS:

WHEREAS, CHPE intends to construct and operate a buried 1,250 megawatt High Voltage Direct Current electric transmission facility consisting of two solid-state cables and related equipment and appurtenances (“Project”) pursuant to the Certificate of Environmental Capability and Public Need granted to CHPE by the New York State Public Service Commission (“PSC”) on April 20, 2013 (as amended from time to time, the “Certificate”), the Project’s Environmental

Management and Construction Plan (as amended from time to time, “EM&CP”) to be approved by the PSC in due course, and other permits and authorizations to conduct certain related activities, including Project construction and Project restoration activities as provided for herein (collectively, “Project Activities”); and

WHEREAS, certain capitalized terms used herein are defined on **Exhibit A**; and

WHEREAS, on January 1, 2020, the Climate Leadership and Community Protection Act (“CLCPA”) became law in the State of New York; and

WHEREAS, in the wake of the enactment of the CLCPA, the New York State Energy Research and Development Authority awarded a contract involving the use of the Project to transmit renewable energy into New York State; and

WHEREAS, in order to accomplish Project Activities within the County, CHPE needs to install and operate buried Project cables in, across, and under certain County roads, as shown on the map attached hereto as **Exhibit B** (the “Affected Roadways”); and

WHEREAS, the County seeks assurances from CHPE that CHPE will pay and/or otherwise indemnify the County for any damage to the Affected Roadways and any access roads, streets, or other public infrastructure used or traversed by CHPE or its contractors to access the work site for installation of the cable in and under the Affected Roadways and/or arising from or related to Project construction, maintenance, and occupancy activities; and

WHEREAS, the County Board of Supervisors has been duly authorized to enter into this Agreement:

NOW, THEREFORE, in consideration of the promises set forth in the recitals above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CHPE and the County, each intending to be legally bound, agree as follows:

1. Rights Granted.

a. The County has consented to CHPE to laying down, constructing and maintaining wires, conductors, conduits and other fixtures in and under the Affected Roadways in the County in accordance with the provisions of this Agreement for the life of the CHPE project.

2. CHPE Construction Responsibilities.

a. CHPE shall be responsible for obtaining any approvals, permits, and/or orders, including renewals thereof, which are required by governing law to undertake Project Activities.

b. CHPE shall be responsible for ensuring that all debris, garbage, and waste generated by Project Activities are immediately cleaned up and properly disposed of.

c. CHPE shall not block or obstruct or interfere with the flow of traffic in both lanes of traffic on any County road except, under severe hardship, a temporary closure lasting no more

than four (4) hours. Temporary single lane closures will be permitted periodically during Project Activities taking into account all of the pertinent circumstances, with close coordination with the County Highway Department.

d. CHPE shall require that its employees, officers, directors, members, managers, agents, licensees, vendors, contractors, subcontractors, haulers and subcontractors will comply with the terms and conditions of this Agreement.

e. CHPE will examine existing conditions and traffic flow and volume patterns to determine the appropriate construction methods for the Transmission Line Improvements prior to commencing construction. CHPE shall, at least two (2) days prior to commencing construction in the Affected Roadways, meet with the Superintendent of Highways of the County and explain the construction process and timing and the measures CHPE will undertake to ensure minimum disruption to the traveling public and the County Highway Department and to minimize the duration of any detours or road closures. Where in-road work will be extensive enough to require detours or road closures, a Traffic Control Plan will be completed in consultation with the County Highway Department prior to the start of construction. All work zone traffic control (“WZTC”) will be done in conformance with New York State Department of Transportation (“NYSDOT”) Standard Specifications. CHPE will erect signage at least one week before commencement of work notifying the traveling public of potential work and delays or detours occurring therefrom.

f. CHPE shall plate over any open trenches during non-working hours. CHPE shall not permit any excavation to be made in or upon the Affected Roadways to remain open or uncovered either day or night, without causing the same to be properly barricaded by day and night and, in addition thereto, CHPE shall place at such location signage, flares, red lanterns, or other warning devices by night so as to properly warn all persons of the danger of such excavation. All active and inactive work zones shall be provided with adequate WZTC for the duration of the work within the Affected Roadways.

3. Road Surveys and Routes.

a. CHPE will review the final Project route and Transmission Line Improvements with the County’s Engineer or designee. Additionally, CHPE will also consult with the County Engineer or designee to finalize a list of roads that CHPE will constitute Affected Roadways, and **Exhibit B** shall be amended if and as appropriate.

b. Prior to CHPE undertaking any Project Activities, CHPE shall provide the County with the final PSC-approved EM&CP involving the Affected Roadways. The PSC-approved EM&CP involving the Affected Roadways shall serve as the basis for the required Financial Security set forth herein.

c. At least five (5) days prior to the commencement of Project Activities involving the Affected Roadways, CHPE shall prepare and provide to the County a pre-construction video survey of the same, which video survey must be acceptable to the County in its reasonable discretion.

d. If, in the reasonable professional opinion of the County's Engineer or designee, the conditions of an Affected Roadway change after the date of this Agreement and before the start of Project construction activities such that any such Affected Roadway intended to be used for access purposes cannot withstand the structural and functional distress anticipated by heavy vehicular traffic resulting from the Project Activities, the County will so notify CHPE and include in its notice the improvements that would be necessary for CHPE to use the same. CHPE will have five (5) business days from its receipt of such notice to notify the County as to whether it can make alternate route arrangements.

- i. If CHPE notifies the County that it can make alternate route arrangements, CHPE will include in its notice to the County a map and description of its proposed alternate route. The County must notify CHPE within three (3) business days from its receipt of such alternate proposed route whether or not that proposed route is reasonably satisfactory to the County. If the proposed alternate route is not reasonably satisfactory to the County, then CHPE and the County will repeat the above process until an alternate route that is reasonably satisfactory to both parties is agreed upon.
- ii. If CHPE notifies the County that it cannot make alternate route arrangements, then CHPE will make the improvements described in the County's initial notice of changed conditions, which repairs will be at CHPE's cost and completed before the onset of Project Activities.

e. If, during the term of this Agreement, the County's Engineer or designee reasonably believes that the condition of any Affected Roadway has changed after the start of Project construction activities such that the Affected Roadway cannot, due to its condition, withstand or continue to withstand the structural and functional distress anticipated by further heavy vehicular traffic, the County will so notify CHPE and include in its notice the improvements that would be necessary for CHPE to continue using the Affected Roadway. CHPE will have five business days from its receipt of such notice to decide if it can make alternate route arrangements.

- i. If CHPE notifies the County that it can make alternate route arrangements, CHPE will include in its notice to the County a map and description of its proposed alternate route. The County must notify CHPE within three (3) business days from its receipt of such alternate proposed route whether or not that proposed route is reasonably satisfactory to the County. If the proposed alternate route is not reasonably satisfactory to the County, then CHPE and the County will repeat the above process until an alternate route that is reasonably satisfactory to both parties is agreed upon.
- ii. If CHPE notifies the County that it cannot make alternate route arrangements, then CHPE will make the improvements described in the County's initial notice of changed conditions, which repairs will be at CHPE's cost and completed before the resumption of Project Activities.

f. Promptly following the substantial completion of Project Activities within the County, CHPE shall prepare and provide to the County a post-construction video survey of the Affected Roadways acceptable to the County in its reasonable discretion. Within one hundred eighty (180) days after substantial completion of Transmission Line Improvements, CHPE shall

prepare and provide the County with “as-built” engineer and surveyor certified plans and maps, in a customary software format which the County may reasonably request (CAD, GPS, etc.). After CHPE has completed Project Activities within the County, CHPE will not use any Heavy Equipment that would cause damage to County roads, unless authorized by the County, where “Heavy Equipment” is defined to include oversize or overweight vehicles and large construction equipment, but which shall not include standard passenger or commercial vehicles.

g. In the event that the County Engineer reasonably believes that Project Activities have deviated from the PSC-approved EM&CP routing within the County without prior written permission from the County, CHPE shall, upon notification from the County, suspend Project Activities unless and until the Construction Inspector provided for at Condition 53(a) of the Certificate has determined that the Project Activities do not in fact deviate from the PSC-approved EM&CP.

4. Road Restoration and Repair of Damage.

a. The standard to be achieved by CHPE in pursuing Project Activities is the return of any Affected Roadway or other public infrastructure used or traversed by CHPE or its contractors to access the Project work site to its original condition as nearly as practicable and, in all events, to restore full service and functionality of the Affected Roadway as soon as reasonably practicable, but no later than sixty (60) days from the date the County sends notice requesting any repairs.

b. No less than forty-five (45) days prior to the commencement of any Project Activities, CHPE shall provide the County with a payment of \$10,000 (the “Deposit”) that the County shall deposit into an escrow account (“Account”). The County may only withdraw funds from the Account to pay for the incremental and out-of-pocket costs, fees, expenses and other bills rendered to or incurred by the County in connection with: (i) the approval of proposed use of Affected Roadways and the assessment of whether the same are suitable for use by Heavy Equipment; and (ii) the County’s monitoring of Project Activities and the performance of its functions as provided for by this Agreement, including payment of any County Designated Engineer (“CDE”) employed by the County to assess road conditions before and after use by CHPE and its contractors with Heavy Equipment, and assessment of any damage to the Affected Roadway(s) caused by the Project Activities (“Allowed Costs”). The County shall provide an itemized statement, together with detailed backup, of any deduction from the Account. If at any time the balance in the Account is reduced to one-third or less of its initial amount, and the County advises CHPE and can demonstrate actual reasonable additional expenses beyond this amount, then CHPE shall provide additional funds for deposit into the Account to cover those reasonable additional expenses.

c. Within fifteen (15) business days of the date upon which CHPE notifies the County that it has completed the initial re-seeding that CHPE will undertake as part of its Project Activities, the County must notify CHPE in writing if it reasonably believes any significant residual damage to the Affected Roadways exist and were caused by Project Activities. Damage may include but is not limited to cracking, imprinting, pitting, tracking, buckling or asphalt and road base damage, damage to culverts, bridges and/or drainage facilities (“residual project damage”).

d. Within 10 business days of receipt of an allegation of residual project damage from the County, CHPE shall notify the County in writing of its agreement or disagreement with the allegations. If CHPE accepts responsibility, it will proceed with due diligence to rectify the condition. If CHPE declines to accept responsibility, the County shall then submit a written invoice (“damage invoice”) to CHPE, detailing estimates of the costs, fees, and/or expenses incurred or to be incurred by the County to repair the residual project damage.

e. CHPE may elect in its sole discretion to pay the amount set forth in the damage invoice accompanying the County’s notice, as liquidated damages. In such event, CHPE shall notify the County in writing of its election and pay the amount within ten (10) business days of receipt of the invoice. If paid in full, the County will have no further claim against CHPE in connection with residual project damage.

f. The manner of repair of any residual project damage by either party shall be in accordance with official industry standards with New York State Department of Transportation and/or municipal requirements that are applicable for the type of road and restoration involved.

g. After the conclusion of Project Activities, the County shall be entitled to withdraw and retain any remaining portion of the initial \$10,000 Deposit made into the Account pursuant to paragraph 4(b) of this Agreement. If CHPE has provided funds to replenish the Account pursuant to paragraph 4(b) of this Agreement beyond the initial Deposit, and any balance remains in the Account against which the County has not claimed reimbursement, said balance shall be returned to CHPE or its assignee.

5. Ongoing Cooperation.

The Parties commit to the taking of such further actions, if and when reasonably requested and consistent with applicable law, as may facilitate the successful achievement of the goals and benefits of the CLCPA and the completion of the Project.

6. Financial Security.

a. Prior to the commencement of any Project Activities, CHPE shall deliver to the County financial security, consisting of either a cash escrow or Letter of Credit (“Financial Security”), which amount is to be calculated based upon the length and types of the Affected Roadways and which shall be sufficient to satisfy the County’s standard requirements for road use and road excavation. The Financial Security shall be in the sum of \$_____. If a Letter of Credit is provided, it shall be issued by a reliable bank with an A or higher rating and authorized to do business in the State of New York. A form of the Letter of Credit acceptable to the County is attached to this Agreement as **Exhibit C**.

b. The Financial Security shall remain in full force and effect in the stated amount for a period of three (3) months after CHPE’s completion of all Project Activities in the County.

c. The purpose of the Financial Security is to guarantee reimbursement to the County for all labor, material, equipment, expenses and attorneys’ fees the County may incur in repairing any residual project damage, to the extent that (i) CHPE’s liability for the same has been finally

adjudicated, (ii) CHPE has failed to pay the ordered judgment, and (iii) applicable insurance is unavailable to reimburse the County for the aforesaid expenses.

d. After the conclusion of Project Activities, the County shall agree to the cancellation and return of the Financial Security. If a Letter of Credit is used, the original Letter of Credit document shall be returned to CHPE by certified mail at the address listed in Section 17 below.

7. Indemnification and Insurance.

a. CHPE, at its own expense, agrees to the insurance, indemnification and general terms and conditions set forth herein.

b. CHPE shall present to the County Certificates of Insurance evidencing the acquisition of liability insurance coverage naming the County as additional insured, on a primary noncontributory basis, in the amount of at least:

- i. \$1,000,000 per occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products and Completed Operations Aggregate. Death/Bodily Injury: \$1,000,000 per person; \$2,000,000 aggregate.
- ii. Coverage shall include contractual liability.
- iii. Property Damage: \$500,000.
- iv. Coverage provided shall be written on a primary and non-contributory basis over any other insurance that may be available.
- v. All policies shall contain a waiver of subrogation.
- vi. No policy shall exclude coverage for lawsuits alleging violations of New York Labor Law, sections 200, 240(1) a/k/a Scaffold Law and 241(6).
- vii. All policies shall be written with an insurance carrier with a Best's rating of A- or better.

c. Said insurance shall be maintained throughout the period during which Project Activities take place and the aforementioned certificate shall provide for a minimum of fifteen (15) business days' written notice to the County prior to cancellation of coverage [with the exception of non-payment of premium in which case the statutory cancellation clause shall apply].

d. To the extent permitted by the governing law, CHPE shall defend, indemnify, protect, save, and hold the County harmless from and against any and all penalties, fines, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom either at law or in equity, which might arise out of, or are caused by, the Project Activities, whether undertaken by CHPE or its contractors or consultants, or any of the right conferred by this Agreement except to the extent any such claims, suits, demands, causes of action, or award of damages relate to the negligence or willful misconduct of the County or any of its officers, boards, employees,

committee members, attorneys, agents, consultants, vendors, contractors and subcontractors. The obligation of CHPE to indemnify and save harmless the County shall extend to the employees, officers, elected officials, and consultants hired by the County.

8. Dispute Resolution.

If a Party has a dispute with the other Party regarding or in connection with this Agreement, then such Party will notify the other Party in writing of such dispute. Before resorting to litigation, the Parties shall use reasonable efforts to settle such dispute through representatives of the Parties for a period of at least thirty (30) days, during which time the parties shall have at least one (1) in-person meeting in Albany County.

9. Captions and Headings.

Captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision or of the scope or intent of this Agreement nor in any way affect this Agreement.

10. Modifications.

This Agreement cannot be amended, modified, or changed orally, but only by agreement in writing signed by the parties.

11. Severability; No Waiver.

If any provision of this Agreement, or any portion of any provision of this Agreement, is declared null, void, voidable, or unenforceable, such provision or such portion of a provision shall be considered separate and apart from the remainder of this Agreement, which remainder shall remain in full force and effect. The waiver by any party hereto or a breach of violation of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation. No waiver is valid unless in writing and signed by party making the waiver. The parties reserve all of their rights and remedies under this Agreement, at law and at equity, including, without limitation, any such rights and remedies under the New York Public Service Law, the New York Eminent Domain Procedure Law, and the New York Transportation Corporations Law.

12. Governing Law; Consent to Jurisdiction.

a. This Agreement shall be governed and construed in accordance with the laws of the State of New York, as in effect from time to time without regard to principles of conflicts of laws.

b. Each party represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Agreement shall be in effect.

13. Binding Effect.

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. Except as set forth in the preceding sentence, nothing in this Agreement is intended to be for, or to inure to the benefit of, any person other than the parties hereto, and their respective successors and assigns.

14. Entire Agreement.

The entire agreement of the parties is contained in this Agreement. No promises, inducements or considerations have been offered or accepted except as herein set forth. This Agreement supersedes any prior oral or written agreement, understandings, discussion, negotiations, and statements concerning the subject matter thereof. The parties hereto agree to execute and deliver such other documents and to perform such other acts as may, from time to time, be reasonably required to give full force and effect to the intent and purpose of this Agreement.

15. Counterparts.

This Agreement may be executed by electronic signature and transmitted by fax or email in counterparts, each of which will be considered an original, and all of said counterparts shall together constitute one and the same instrument which may be sufficiently evidenced by one counterpart.

16. Authority of Parties.

The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.

17. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given upon hand delivery, upon the third day following delivery via the United States Postal Service, on the first day following delivery via a nationally registered United States overnight courier service, or on the day when telecopies are sent by facsimile transmission if additional notice is also given under one of the previous three methods within three (3) business days thereafter. For purposes of this Agreement only, any notice to the parties shall be directed to the party as set forth below, with a copy provided via electronic mail.

For CHPE Parties:

CHPE LLC
623 5th Ave, 20th Fl
New York, NY 10022
Attn: General Counsel
Jeremiah.Sheehan@transmissiondevelopers.com
Josh.Bagnato@transmissiondevelopers.com

For County:

Albany County
Harold L. Joyce County Office Building
112 State Street
Albany, NY 12207
Attn: County Highway Superintendent

18. Assignment.

Neither Party may assign its rights or its obligations under this Agreement in whole or in part without the prior written consent of the other Party, which consent shall not be unreasonably withheld conditioned, or delayed; except no consent of any kind shall be required in the case of an assignment by CHPE to a Permitted Transferee.

IN WITNESS WHEREOF, CHPE and the County have caused their respective, duly authorized officers to execute this Road Use and Crossing Agreement of the day and year first above written.

Albany County, New York

CHPE LLC

By: _____

By: _____

CHPE Properties Inc.

By: _____

EXHIBIT A DEFINITIONS

“**Affiliate**” means with respect to a specified Person: any other Person directly or indirectly in Control of, Controlled by, or under common Control with such specified Person; provided, however, for purposes of this Agreement, Project Company shall not be considered to be an Affiliate of Railroad Company, and vice versa. For purposes of this Agreement, to be in “**Control**” means to be in possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Debt Fund Affiliates**” means (a) any fund or client managed by, or under common management with Blackstone Liquid Credit Strategies LLC, Blackstone Tactical Opportunities Fund L.P. or Blackstone Real Estate Debt Strategies L.P., (b) any fund or client managed by an investment manager within the credit-focused division of The Blackstone Group Inc., (c) any fund managed by Blackstone Alternative Credit Advisors LP, Blackstone Debt Advisors L.P., Blackstone Distressed Securities Advisors L.P., Blackstone Mezzanine Advisors L.P. or Blackstone Mezzanine Advisors II L.P., and (d) any Affiliate of Project Company other than Project Company that is, in each case, a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course that, in each case of clauses (a) through (d), provides Financing to the Project on terms and conditions that, when considered in the aggregate, are no less favorable to Project Company than the terms and conditions that would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate of Project Company; provided, that at any time that the aggregate amount of commitments made by Debt Fund Affiliates under the Financing for the Project constitute less than fifty percent (50%) of the aggregate commitments outstanding thereunder, such commitments shall be deemed to have been made on an arm’s length basis for purposes of this definition.

“**Financing**” means each construction, interim, long-term debt or equity financing, refinancing and/or credit support arrangement related to all or a portion of the development, construction or operation of the Project.

“**Investment Grade Rating**” means, with respect to a Person, that such Person has (whether individually or together with its Affiliates; provided such Affiliates are jointly liable with Project Company under this Agreement or procure a guarantee, binding equity commitment letter (with Project Company) or other credit support as to the obligations of Project Company under this Agreement) at least one Long-Term Credit Rating of no less than (as applicable) ‘BBB-’ from S&P, ‘Baa3’ from Moody’s, or “BBB-” by Fitch.

“**Lender**” means, with respect to Project Company, any Person, other than an Affiliate of Project Company, providing or seeking to provide Financing or financial support in any form in respect of the Project, including any commercial bank, institutional lender, export credit agency, funding agency, underwriter, bondholder, or insurance agency, and any representative, collateral agent, trustee, depository, agent or other designee of such Person; provided, that solely for the purposes of this definition, a Debt Fund Affiliate is not deemed to be an “Affiliate” of Project Company.

“Permitted Transferee” means (i) an Affiliate of CHPE (which shall include (x) existing or future portfolio companies of any investment funds or vehicles Affiliated with or managed by Blackstone Capital Partners L.P. or Blackstone Energy Partners L.P. and (y) other investment funds or vehicles managed by Blackstone Capital Partners L.P. or Blackstone Energy Partners L.P. (including, in each such case, Blackstone Capital Partners VIII L.P. and Blackstone Energy Partners III L.P.)), (ii) any Lender (x) to whom CHPE collaterally assigns this Agreement or (y) who is exercising its rights and remedies under any documentation related to the Financing at CHPE, (iii) any Industrial Development Agency or Industrial Development Authority formed and existing pursuant to the General Municipal Law and the Public Authorities Law of the State of New York, or (iv) a Qualified Transferee.

“Qualified Transferee” means any Person that has (whether individually or together with its Affiliates; provided such Affiliates are jointly liable with Project Company under this Agreement or procure a guarantee, binding equity commitment letter (with Project Company) or other credit support as to the obligations of Project Company under this Agreement) either (a) an Investment Grade Rating, (b) a Total Net Worth of at least One Billion Dollars (\$1,000,000,000) or (c) assets under management of at least Ten Billion Dollars (\$10,000,000,000).

“Total Net Worth” means, with respect to any Person, the tangible net worth, bona fide capital commitments and fair market value of investments and other assets over which such Person (together with its Affiliates) collectively has supervisory control.

**EXHIBIT B
MAP**

DRAFT

**EXHIBIT C
FORM OF LETTER OF CREDIT**

DRAFT