

**MASTER AGREEMENT FOR ENERGY CONSERVATION AND
MANAGEMENT SERVICES
(ENERGY EFFICIENCY AND DEMAND SIDE MANAGEMENT),**

BETWEEN

The County of XXX, New York State

AND

Niagara Mohawk Power Corporation d/b/a NATIONAL GRID

This Master Agreement For Energy Conservation and Management Services ("Master Agreement") for energy conservation and management services is entered into as of the XX day of Month, 2020 ("Effective Date"), by and between the **County of XXXX, acting by and through its XXX County Sewer District No. 1** ("The County"), and **Niagara Mohawk Power Corporation d/b/a National Grid** ("National Grid") having a principal office at **300 Erie Boulevard West, Syracuse, NY 13202** each, individually, a "Party" and collectively, the "Parties).

RECITALS

WHEREAS, National Grid and The County mutually desire to enter into this Master Agreement to be used by The County in obtaining from National Grid certain energy conservation and management services offered by National Grid under its Energy Transition Implementation Plan ("ETIP") programs, as described in the Work Statements dated 07/28/2017, and to facilitate partnering arrangements; and

WHEREAS, National Grid is willing to provide to The County certain energy conservation and management services, through the use of subcontractors, under National Grid's ETIP program; and

WHEREAS, The County acknowledges that it has negotiated and entered into this Master Agreement without having undertaken any competitive bidding process; and

WHEREAS, it is solely responsible for establishing its authority to be bound by the Master Agreement in the absence of such competitive bidding process; and

WHEREAS, National Grid and its Subcontractor(s) shall be collectively referred to herein as the "Contractor".

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

GENERAL CONDITIONS

GC.1 Purpose. The County desires assistance in performing certain energy conservation measures offered through ETIP programs within National Grid's service territory. The purpose of this Master Agreement is to facilitate the Installations through Task Orders. This Master Agreement sets forth the terms and conditions under which subsequent Task Orders may be entered into between the Parties.

GC.2 Definitions. Capitalized terms used in this Master Agreement shall have the following definitions:

The term **“Acceptance”** means the written acknowledgement by the authorized representative of The County approving of an individual phase or completed Installation pursuant to a Task Order

The term **“Contracting Officer”** means an official of The County authorized to enter into, administer, and/or terminate this Master Agreement on behalf of The County, and who is authorized to make related determinations and findings within the limits established pursuant to The County’s Rules of Order and Purchasing Policy regulations.

The term **“Contracting Officer’s Representative” or “COR”**) means a local or project site representative of the Contracting Officer delegated specific limited authority, as set forth in a formal delegation letter signed by the Contracting Officer, for a given Task Order In addition, it means the person who evaluates or inspects the Contractor’s performance of service in accordance with the quality assurance surveillance plan written specifically for the contracted services to be evaluated.

The term **“Contracting Officer’s Technical Representative” or “COTR”**) means the representative performs technical monitoring of Contractor actions, is responsible for requesting products and services through contract, and manages day-to-day tasks of the contract.

The term **“Energy Conservation Measure” or “ECM”** means one or more Installations completed, or to be completed, under a Task Order, including one or more feasibility studies, engineering and design, operation and maintenance, and/or implementation of one or more Installations, which include, but are not limited to, energy, energy efficient maintenance, energy management services, facilities alterations, installation and maintenance of energy saving devices and technologies and demand side management offered through ETIP programs available within National Grid’s service territory.

The term **“Energy Conservation Measure Cost” or “ECM Cost”** means the total cost of the Work, overhead and profit, for an ECM, less any financial incentive or rebates, if provided by the utility or government program. Payment for completed ECMs shall be calculated based upon the ECM Cost.

The term **“Energy Conservation Project” or “ECP”** means an identified project intended and designed to provide any of the following: energy savings, demand reduction, and/or energy efficiency improvements.

The term **“Installations”** means the installation of ECMs provided by the Contractor for The County offered by the Contractor under its Energy Transition Implementation Plan programs.

The term **“Occupied Period”** means the hours during which a facility or building is occupied or used in the normal course of business.

The term **“Proposals”** has the meaning in Section GC.20.4.

The term **“Quality Control”** means a management function of the Contractor whereby control of quality is exercised for the purpose of preventing defective Installations. For purposes of this Master Agreement, quality control shall mean those actions taken by the Contractor to control implementation of Installations so they conform to the Task Order requirements.

The term **“Proposal”** has the meaning set forth in Section GC.20.4 below.

The term “**Services**” has the meaning set forth in Section GC.4 below.

The term “**Subcontractor**” means any corporation, partnership or individual hired directly by National Grid to perform the services or provide the products contemplated under this Master Agreement and Task Orders resulting from this Master Agreement.

The term “**Task Order**” or “**T.O.**” means a project specific agreement executed under this Master Agreement for any feasibility study, engineering and design, implementation, and/or operation and maintenance of, or any activity related to an Installation. (A Task Order can also be identified as a “Delivery Order” or “D.O.”)

The term “**Termination Schedule**” means a schedule developed for each financed Installation which sets forth the interval(s) and amount(s) of payments required for the repayment of the Installation Costs, including any finance costs accrued.

The term “**Work**” – means all labor, materials, tools, equipment, services, transportation and/or other items required for the completion of the Installation.

GC.3 Term. This Master Agreement shall have a term of five (5) years. This Master Agreement may be terminated in its entirety by either Party upon thirty (30) days written notice to the other Party. Thereafter, no new Task Orders shall be entered into under this Master Agreement. Termination, modification or expiration of this Master Agreement shall not in any way affect Task Orders previously entered into under this Master Agreement. This Master Agreement shall be effective as of the Effective Date defined above.

GC.4 Services by the Contractor. The Contractor shall arrange for the provision of preliminary audits, feasibility studies, engineering and design studies, and all initial capital, labor, material, supplies and equipment to identify, implement, operate or maintain Installations in accordance with Task Orders entered into pursuant to this Master Agreement (“Services”). These Services may be ordered individually, as a group or in any combination under a single Task Order. Any and all such Services contemplated by this Master Agreement and any related Task Orders may be entirely performed through one or more subcontractors engaged by the Contractor. The County has selected Smart Watt.

Notwithstanding anything contained in this Master Agreement or any Task Order to the contrary, in no event shall the Contractor provide or perform any work, service or obligation under this Master Agreement that is contrary to or prohibited by law or National Grid’s tariffs.

GC.5 Information. Subject to confidentiality requirements and applicable law, The County shall provide the Contractor with any information requested by the Contractor needed to comply with regulatory requirements and/or work requirements. In the event the information requested by the Contractor is critical to the performance of the Work and cannot be provided by The County, the Contractor may terminate the Task Order and collect payment for Work completed through the date of termination.

GC.6 Independent Contractors. The relationship of the Parties hereto is that of independent contractors. None of the terms herein is intended to create nor will be construed to create an agency, partnership or employment relationship among or between the Parties. Neither Party, nor any its respective officers, members, or employees, will be deemed to be the agent, employee, or representative of the other Party. Each Party agrees to be wholly responsible for and to pay when due all federal, state, and local taxes and contributions for unemployment insurance.

GC.7 Subcontractor Selection. Subject to Section FP.7 below, National Grid shall assign all of the Work under a Task Order to the Subcontractor(s). When practical, National Grid shall competitively select the Subcontractor(s) for the purpose of determining the reasonableness of

the Subcontractor's(s') prices. When competition is not practical, price reasonableness may be determined by comparing proposed prices with those obtained for the same or similar work, prices published in independent cost guides, published in competitive price lists or developed by independent sources.

Subcontractor(s) selection shall be based on cost, experience, past performance, reliability, and such other factors as National Grid may deem appropriate, as long as such factors are necessary to meet The County's minimum needs including but not limited to Insurance, workman's compensation, and a criminal background check. The County shall have the right to approve or disapprove of the Subcontractor(s) proposed by National Grid in the Proposal.

All Subcontractor work shall comply with prevailing wage rates, pursuant to New York State's requirements.

GC.8 Authority of Contracting Officer. The County's Contracting Officer shall be the only official authorized to enter into and/or modify a Task Order entered into under this Master Agreement on behalf of the County.

GC.9 Ownership of Work Product. The County may elect not to use the Contractor to perform Installations. If The County so elects, it will pay for any accepted Work, including any equipment, completed studies, and engineering and design Work. Title to Work performed by the Contractor for The County under a Task Order shall become the property of The County at the time of Acceptance of the Work provided that The County has paid for such Work pursuant to this Agreement.

GC.10 Responsibility for Operation and Maintenance. The operation and maintenance will be pursuant to any Task Order executed under this Master Agreement.

GC.11 Other County Projects. The County shall have the right to enter into other agreements similar to this Master Agreement for energy conservation work, such as without limitation, implementing equipment installation, construction projects and ECMs, including installing new energy conservation equipment, removing existing energy consuming equipment, or adding new energy consuming equipment. The County will notify the Contractor prior to implementing projects that may affect Installations under this Master Agreement. In the event The County's activities hereunder hinder the Contractor's work schedule or cause the Contractor to incur additional costs to accommodate same, the County shall be liable to the Contractor for such additional costs and expenses to complete the Work and for Services.

GC.12 Reserved.

GC.13 Emission Credits. All on-site emission credits earned by virtue of Task Orders entered into hereunder shall be the property of The County.

GC.14 Order of Precedence. In the event of any conflicts between this Master Agreement and any other document executed hereunder then this Master Agreement shall prevail unless otherwise agreed to between the Parties and set forth in a Task Order.

GC.15 Reserved.

G.C.16 ECM Proposal. The Contractor shall submit an Installation proposal setting forth a prioritized list of the recommended ECPs, a preliminary estimate of the cost to implement each ECP, the total costs for implementing the Installation (including estimated feasibility study, engineering and design, and implementation costs), and estimated cost savings. Additionally, The County may request a proposal from the Contractor in order for The County to evaluate of Installations.

GC.17 ECM Restrictions. The County is solely responsible for establishing authority to enter into this Master Agreement and any Task Order, and hereby warrants and represents that it shall comply with all applicable state and local laws in entering into this Master Agreement and any Task Order. Moreover, The County shall not consider ECMs that include:

- a) ECMs which would violate any federal, state, or local laws or regulations,
- b) ECMs which degrade performance or reliability of existing The County's equipment, and
- c) ECMs that violate the then current versions of the National Electric Code, the National Electric Safety Code, the Uniform Building Code or the Uniform Mechanical Code.

GC.17.2 Facility Performance Requirements of ECMs. ECMs proposed by the Contractor shall conform to the following facility performance standards:

- a) Lighting levels shall meet the minimum requirements of the then current Illuminating Engineering Society (IES) Lighting Handbook; and
- b) ECMs shall permit flexible operation of energy systems for changes in occupancy levels and scheduling of facilities. In proposing an ECM, the Contractor may assume the building function will remain constant unless otherwise indicated by The County.

GC.18 Task Orders. Following the evaluation of the ECM proposal, The County may elect to execute a Task Order with the Contractor for the evaluation, implementation or operation and maintenance of the ECM.

The Task Order may have five phases: (1) Audit (when applicable), (2) Feasibility Study Phase, (3) Engineering and Design Phase, (4) Implementation Phase and (5) Operation and Maintenance Phase. Because the extent of all the Work is unlikely to be known at the time the Task Order is entered into, these phases shall be line items under the Task Order, and shall be issued with an estimated Termination Schedule at the time the Task Order is executed. However, Work will not commence on a particular phase unless and until a statement of work and a price for that phase have been mutually agreed upon by the Parties.

Upon completion and Acceptance of a Feasibility or Engineering and Design Phases, The County may elect to:

- a) pay the ECM Cost for each completed Phase within thirty (30) calendar days of being invoiced, or
- b) defer payments for that Phase until the end of the next Phase at which time The County shall pay the ECM Cost for each completed Phase within thirty (30) calendar days of invoice, or
- c) include such amounts in the ECM Cost, if The County elects to proceed with the Implementation Phase.

If The County elects not to proceed with the next Phase, it shall pay the Contractor the ECM Cost for the prior completed Phases, as negotiated by the Parties in the Task Order. A decision to proceed or not to proceed with the next Phase must be made within sixty (60) days of receipt of a written request from the Contractor. Only the Contracting Officer shall be authorized to exercise The County's option to proceed to the next Phase, and such exercise shall be provided in writing within sixty (60) days of receipt of a statement of work and price.

The timing and amount of The County's payments of appropriated funds for the Operation and

Maintenance Phase shall be determined in the Task Order. The County represents that it shall comply with all applicable state funding appropriation requirements.

GC.19 Reserved

GC.20 ECM Engineering and Design Phase. If applicable, after evaluation and Acceptance of the Feasibility Study Phase, The County may elect to proceed with the Engineering and Design Phase. Prior to proceeding, the Parties shall agree upon a statement of work for all engineering and design services necessary for the implementation of a particular ECM, a time frame for completion of the Work, and a price or cost cap for engineering and design work for the ECM. If The County elects to proceed with the Implementation Phase as set forth below, the cost of the engineering and design work shall be rolled into the total ECM Cost. The Task Order shall include an estimated amortization schedule for the ECM.

GC.20.1 Verification of Floor Plans. The Contractor shall review any floor plans provided by The County and verify that such floor plans meet the specifications provided to the Contractor by The County. .

GC.20.2 Contractor's Design Review. Task Orders prepared by the Contractor shall be provided to permit adequate time for The County review of engineering and design work, as negotiated in the Task Order.

GC.20.3 Site Plans. If proposed ECMs require installation outside existing buildings or structures, a site plan showing recommended siting of ECMs shall be prepared and submitted by the Contractor in the Proposal for The County's review and approval. It is recommended that the Contractor propose alternate sites for review in case the primary site is unavailable.

GC.20.4 ECM Implementation Proposal. Upon completion and Acceptance of the Engineering and Design Phase, the Contractor will submit to The County an ECM implementation proposal (the "Proposal"). If requested by the Contracting Officer, the Contractor will be required to present a briefing to The County explaining the Proposal. The County shall evaluate the Proposal for technical soundness and price reasonableness. If The County elects to proceed with the ECM, the Contractor and The County shall agree upon a complete scope of work with specifications, time for performance, ECM cost, source and cost of capital, payment terms, amortization schedule, and final Termination Schedule.

GC.21 ECM Implementation Phase. The Contractor shall perform work in accordance with the Task Order.

GC.22 Entire Agreement. This Master Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof, and any and all previous representations or agreements with respect to such subject matter, either oral or written, are hereby annulled and superseded.

GC.23 Amendment. This Master Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of all Parties.

GC.24 Not Retroactive. Any termination, modification, or expiration of this Master Agreement shall not retroactively affect Task Orders previously entered into under this Master Agreement, nor shall it affect any obligation for any payment, charge, rate, or other matter that may be imposed pursuant to the Contractor's tariffs, rates, rules, regulations, riders, practices, or terms and conditions of service as may be modified, amended, or supplemented by the Contractor.

GC.24 Governing Law. This Master Agreement shall be governed and construed in accordance with the laws of the State of New York without regard to the principles of the conflict of laws contained therein. Each Party hereby submits to the personal and subject matter

jurisdiction of the courts of the State of New York for the purpose of interpretation and enforcement of this Master Agreement.

WARRANTIES AND REMEDIES

WR.1 Warranties. The Contractor shall pass through to **The County** all warranties on equipment installed pursuant to a Task Order.

In the event the Contractor provides O&M services, a separate warranty may be negotiated for such services.

WR.2 No Other Warranties. The warranties set forth in WR.1 are exclusive and in lieu of all other warranties. The Contractor makes no other representations, warranties or guarantees in connection with Work, Installations, Services or other items provided in connection with this Master Agreement and Task Orders. The Contractor does not make any representations or warranties of any kind regarding the benefits or energy savings to be achieved by, or the adequacy and safety of, the ECMs, ECPs or any other equipment or products provided under this Master Agreement. The County understands and agrees that Contractor is not a manufacturer of, or regularly engaged in the sale or distribution of, or an expert with regard to, the ECMs. The Contractor does not endorse, guarantee or warrant any manufacturer or product including warranties of merchantability or fitness for a particular purpose. Any warranties provided by the original manufacturers, licensors or providers of material, equipment or other items provided or used in connection with this Master Agreement ("Third Party Warranties") are not warranties of the Contractor and the Contractor makes no representations, warranties or guarantees as to the applicability or enforceability of such Third Party Warranties. This section shall survive any expiration, termination or cancellation of this Master Agreement.

WR.3 Contractor Limitation of Liability. The Contractor shall not be liable in any way to The County for any special, incidental, indirect, penal, punitive or consequential damages in connection with this Master Agreement or subsequent Task Orders. In no case shall the Contractor's liability to The County, regardless of the amount of claims or theory of liability, exceed the price for the Work and Services paid by The County under the Agreement. This section shall survive any expiration, termination or cancellation of this Master Agreement.

WR.4 Reserved.

WR.5 Prompt Payment. The County shall promptly pay all invoices for Work and Services performed under each Task Order. Late payments made by The County to the Contractor shall accrue interest at the then prevailing rate applicable under the New York Public Service Law, or as may otherwise be provided in the Task Order.

WR.6 Reserved.

WR.7 Differing Site Conditions. In the event site conditions differ materially from those contained in the Task Orders due to conditions that could not be reasonably viewed during the ECM phase or Task Orders development phase, additional costs incurred by the Contractor due to the differing conditions shall be negotiated, and the ECM Cost shall be increased to reflect an equitable adjustment to reflect the actual cost increase.

FINANCING AND PAYMENT PROVISIONS

FP.1 Reserved.

FP.2 Financial Incentives, Rebates, and Design Assistance: The County will receive the same financial incentives, rebates, design review, goods, services, and/or any other assistance

provided without charge, that is generally available to eligible customers of a similar rate class or size.

Proposals under this Master Agreement are not commitments of any ETIP program incentives, which are authorized under separate offerings from the respective ETIP program administrators.

FP.3 Reserved.

FP.4 Reserved.

FP.5 Pre-Acceptance Termination. In the event The County desires to terminate a Task Order for any reason (including, without limitation, for convenience) prior to Acceptance, The County may do so by giving written notice to the Contractor thirty (30) days prior to the effective date of such termination. The County shall pay to the Contractor a negotiated amount to include an additional finance charge based on an indexed formula, which reduces the financiers' risk and reduces the cost of buyout to the agency.

FP.6 Post-Acceptance Termination. In the event The County desires to terminate a Task Order for any reason (including, without limitation, for convenience) after Acceptance, The County may do so by giving written notice to the Contractor thirty (30) days prior to the effective date of such termination. The County shall pay to the Contractor a negotiated amount to include an additional finance charge based on an indexed formula, which reduces the cost of buyout to The County.

FP.7 Assignment of Claims. The County payments under each Task Order executed pursuant to this Master Agreement may be assigned pursuant to applicable law. Any bank, trust company or other financing institution that participates in financing an ECM shall not be considered a Subcontractor of National Grid.

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SPECIAL REQUIREMENTS

SR.1 Environmental Protection. The Contractor shall comply with all applicable federal, state and local laws, regulations and standards regarding environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Navigation Act, the Hazardous Materials Transportation Act, and their New York State analogs (collectively "the Environmental Laws"). All environmental protection matters shall be coordinated with the Contracting Officer or designated representative. If the Contractor causes any release or discharge beyond the reportable quantity of a hazardous substance, oil, pollutant or hazardous material (collectively "Hazardous Materials"), as those terms are defined in the Environmental Laws, resulting from its operation on The County property in connection with the implementation of ECMs the Contractor shall immediately notify the Contracting Officer and perform a cleanup, in accordance with the Environmental laws. The Contractor shall comply with the instructions of The County with respect to avoidance of conditions that create a nuisance or create conditions that may be hazardous to the health of any personnel.

SR.2 Environmental Permits. Unless otherwise specified, the Contractor shall provide all required environmental permits and/or permit applications necessary to comply with all applicable federal, state and local requirements prior to implementing any ECM in the performance of a Task Order executed pursuant to this Master Agreement. If any such permit or permit application requires the signature or other cooperation of The County as owner/operator of the property, The

County agrees to cooperate with the Contractor in obtaining any necessary permit or permit application and be responsible for all such costs.

SR.3 Handling and Disposal of Hazardous Materials. The County understands and agrees that (i) the Contractor has not inspected, and will not inspect, the project site in connection with a proposed ECM for the purpose of detecting the presence of pre-existing Hazardous Materials that relate to an ECM or any project site, and (ii) The County shall retain sole responsibility for the proper identification, removal, transport and disposal of any fixtures, components thereof, or other equipment or substances incidentally containing pre-existing Hazardous Materials, except as specifically agreed to by the Contractor pursuant to Paragraphs SR.4 and SR.5 (below).

If the Contractor, during performance of the work under a Task Order executed pursuant to this Master Agreement, has reason to believe that it has encountered or detected the presence of pre-existing Hazardous Materials, the Contractor shall stop work and shall notify The County. The County will evaluate the site conditions and notify the contractor of the results of this evaluation. The Contractor shall not be required to recommence work until this situation has been resolved. Any delay resulting there from shall be grounds to request an increase in the ECM Cost to the extent that such delay increases ECM Costs.

SR.4 Asbestos and Lead-Based Paint. To the extent provided for in a Task Order executed pursuant to this Master Agreement, in connection with the implementation of any ECM, the Contractor may agree to remove pre-existing asbestos containing material or lead-based paint, incidental to implementation of an ECM. However, unless the Contractor explicitly agrees in said Task Order to perform any portion of the testing, removal or abatement of the pre-existing asbestos or lead-based paint as part of the scope of work for any ECM, and unless the Task Order specifically references this Paragraph SR.4, The County shall be deemed to be solely responsible as provided for in Paragraph SR.3.

If the Contractor in the course of ECM implementation disturbs suspected lead-based paint or asbestos containing material, it may propose to The County that it perform any portion of the testing, removal, or abatement of the lead-based paint or asbestos containing material. Said proposal will include the requested increase in the ECM Cost on account of such additional work. The Contractor will not commence work involving additional cost without approval of the Contracting Officer. In the absence of an agreement to the contrary, the provisions of Paragraph SR.3. (above) shall apply.

In the event the Contractor agrees to include any portion of the testing, removal or abatement of the asbestos within the scope of work for an ECM implemented as described above in this Paragraph, the hazardous waste manifests or other shipping papers shall identify The County as the sole generator of the Hazardous Materials.

SR.5 Refrigerants, Fluorescent Tubes and Ballasts. To the extent provided for in a Task Order executed pursuant to this Master Agreement in connection with the implementation of any ECM, the Contractor shall remove and/or dispose of all ozone depleting refrigerants, fluorescent tubes and fluorescent magnetic core and coil ballasts incidental to an ECM to the Hazardous Materials Disposal site (HAZMAT) on the installation. If there is no HAZMAT on the installation, any Hazardous Materials described in this Paragraph SR.5 that are produced as a result of an Installation will be disposed in accordance with all applicable federal, state and local laws and regulations, provided however, that the hazardous waste manifests or other shipping papers shall identify The County as the sole generator of the Hazardous Materials.

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

For “The County”	For the “Contractor”
The County of County	Niagara Mohawk Power Corporation d/b/a National Grid
Signature:	Signature:
Printed Name:	Printed Name:
Title:	Title:

