

**AGREEMENT FOR THE PURCHASE AND SALE
OF RENEWABLE ENERGY CERTIFICATES**

This Agreement for the Purchase and Sale of Renewable Energy Certificates (“Agreement”) is executed on December 17, 2021 (“Effective Date”) by and between the New York State Energy Research and Development Authority, a public benefit corporation, having a principal business address of 17 Columbia Circle, Albany, New York 12203 (“NYSERDA”), and the City of New York (“City”), a municipal corporation formed pursuant to the laws of the State of New York. NYSEDA and City are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.”

WHEREAS, on August 1, 2016, the New York State Public Service Commission (“PSC”) adopted a Clean Energy Standard (“CES”) to achieve a statewide deployment goal of 50% renewable generation resources by 2030;¹

WHEREAS, Mayor de Blasio’s One New York: The Plan for a Strong and Just City sets goal for New York City to achieve 100 percent clean electricity by 2040 and carbon neutrality by 2050;

WHEREAS, certain manifestations of climate change, including sea level rise, longer and more frequent periods of extreme hot temperatures and more frequent and intense storms, present a clear and present danger to the life, safety and economic welfare of the citizens and infrastructure of New York City, and electricity generated from renewable resources and delivered into New York City will reduce reliance on in-City fossil-fueled electric generating facilities and reduce emissions from such facilities that contribute to climate change and poor health;

WHEREAS, on October 15, 2020 the PSC modified the CES to establish a new Tier 4, which has the goal of increasing the consumption of renewable energy within New York City in furtherance of the Climate Leadership and Community Protection Act requirements that 70% of electric generation consumed in the State in 2030 be renewable and that the State achieve a zero emission electric system by 2040;²

WHEREAS, pursuant to the 2020 CES Order NYSEDA conducted a competitive solicitation in the form of T4RFP21-1 to procure Tier 4 RECs (defined below);

WHEREAS, NYSEDA, pursuant to awards made under T4RFP21-1, entered into (i) that certain Tier 4 Renewable Energy Certificate Purchase and Sale Agreement, dated as of November 29, 2021 (the “CHPE Agreement”), with H.Q. Energy Services (U.S.) Inc., a Delaware corporation (“HQ”), and (ii) that certain Tier 4 Renewable Energy Certificate Purchase and Sale Agreement, dated as of November 29, 2021 (the “CPNY Agreement” and, together with

¹ Cases 15-E-0302, *et al.*, Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting A Clean Energy Standard (issued August 1, 2016).

² Case 15-E-0302, *supra*, Order Adopting Modifications to the Clean Energy Standard (issued October 15, 2020).

the CHPE Agreement, the “Purchase Agreements”), with Clean Path New York LLC, a Delaware limited liability company (“CPNY”), which Purchase Agreements have been submitted to and are subject to the PSC’s approval;

WHEREAS, City wishes to make voluntary purchases from NYSERDA of Tier 4 RECs created under the Purchase Agreements to catalyze large-scale development and delivery of renewable energy into New York City, and NYSERDA wishes to sell Tier 4 RECs to City as a voluntary purchaser in accordance with the 2020 CES Order, pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, City has filed a notice with the PSC regarding its intention to procure renewable energy from offshore wind resources and Tier 4 resources in a quantity equal to its ongoing energy consumption; and

WHEREAS, City and NYSERDA are entering this Agreement to memorialize the terms of City’s long term purchase of Tier 4 RECs.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1: DEFINITIONS

1.1 Definitions. In addition to any other terms defined herein, the following terms shall have the meaning ascribed to them below:

(a) “Actual Quantity” means, for any period, an amount of Tier 4 RECs equal to the sum of (i) City’s Metered Electric Load for such period, *minus* (ii) the City Actual OREC Load Share for such period.

(b) “Adder” means the per-REC amount charged by NYSERDA to purchasers of Tier 4 RECs for the sole purpose of recouping NYSERDA’s costs to administer the Tier 4 REC program, which shall be calculated based on the amount, if any, approved by the PSC to be charged by NYSERDA to PSC-jurisdictional load-serving entities for such purpose.

(c) “Annual Reconciliation” means a summary and comparison conducted by NYSERDA of City’s Forecast Electric Load and Metered Electric Load for the previous calendar year, which will set forth the variance between the projected and actual usage for each month.

(d) “CHPE Monthly Tier 4 REC Price” means the monthly prices NYSERDA pays CHPE for each Tier 4 REC pursuant to the CHPE Agreement.

(e) “CHPE Project” means the combination of the portfolio of renewable resources and transmission lines HQ will utilize to deliver renewable energy into New York City pursuant to the CHPE Agreement.

(f) “City Actual OREC Load Share” means, for any period, the City’s load share allocation of the total statewide quantity of Offshore Wind RECs generated in such period based

on its Metered Electric Load for the same period (measured in MWh), as calculated by NYSERDA using the same methodology used by NYSERDA to determine the load share allocation of jurisdictional load-serving entities for purposes of CES compliance for such period, but only to the extent the City pays for such load share allocation of Offshore Wind RECs, whether directly to NYSERDA or indirectly through its load-serving entity or otherwise.

(g) “City Fiscal Year” means the 12-month period commencing on July 1 and ending on June 30.

(h) “City Forecast OREC Load Share” means, for any period, NYSERDA’s reasonable forecast of the City’s load share allocation of the total statewide quantity of Offshore Wind RECs generated in such period.

(i) “City NYGATS Account” means the NYGATS account established by City into which NYSERDA shall transfer Tier 4 RECs and (if applicable) Offshore Wind RECs as performance under this Agreement.

(j) “CPNY Monthly Tier 4 REC Price” means the monthly prices NYSERDA pays CPNY for each Tier 4 REC other than Tier 4 RECs for which CPNY is compensated based on a share of revenues earned by NYSERDA from sales of such Tier 4 RECs to voluntary purchasers other than the City pursuant to the CPNY Agreement.

(k) “CPNY Project” means the combination of the portfolio of renewable resources and transmission line CPNY will utilize to deliver renewable energy into New York City pursuant to the CPNY Agreement.

(l) “Contract Delivery Term” means a period of twenty-five (25) years commencing upon the later of (i) the date NYSERDA first purchases Tier 4 RECs pursuant to the Purchase Agreements and (ii) the Inside Date as defined in Section 2.6.

(m) “Delivery” or “Deliver” means NYSERDA’s electronic delivery of Tier 4 RECs via the NYGATS to the City NYGATS Account in accordance with the NYGATS Operating Rules, or such other form or matter of crediting Tier 4 RECs as may be approved or directed by the PSC.

(n) “Forecast Electric Load” means City’s projection of its monthly electric usage (measured in MWh) for the subsequent calendar year.

(o) “Forecast Quantity” means, for any period, an amount of Tier 4 RECs equal to the sum of (i) City’s Forecast Electric Load for such period, *minus* (ii) the City Forecast OREC Load Share for such period.

(p) “Metered Electric Load” means City’s monthly electric usage (measured in MWh) as reflected in the version 2 monthly invoices issued by the NYISO to City’s load-serving entity, which monthly invoices include four-month true-ups of usage data. Such information shall be provided to NYGATS by the NYISO or City’s load-serving entity, as appropriate.

(q) “Monthly Obligation Payment” has the meaning set forth in Section 2.2.

(r) “Monthly Tier 4 REC Price” has the meaning set forth in Section 2.2.

(s) “New York Generation Attribute Tracking System” or “NYGATS” means the tracking system that records electricity generation attribute information within New York State, and processes generation attribute information from energy imported or produced and consumed within New York State, as a basis for creating tradable generation attribute certificates, including Tier 4 RECs and Offshore Wind RECs.

(t) “New York State Public Service Commission” or “PSC” means the administrative body established by the New York State Legislature pursuant to Article 1 of the New York Public Service Law.

(u) “NYGATS Operating Rules” means the rules governing the operation of the NYGATS by NYSERDA and its designated NYGATS Administrator, and the participation in and use of the NYGATS by users. The Operating Rules describe how the system is operated and delineate the roles, requirements and responsibilities of all users.

(v) “NYISO” means New York Independent System Operator, Inc.

(w) “NYPA” means the New York Power Authority.

(x) “Reconciliation Invoice” shall have the meaning set forth in Section 2.3(b).

(y) “Renewable Energy Certificate” or “REC” means the instrument created by NYGATS that represents the environmental attributes of one MWh of electricity generation from a renewable resource.

(z) “Tier 4 REC” has the meaning given to that term in the 2020 CES Order and as created pursuant to the Purchase Agreements.

ARTICLE 2: PURCHASE AND SALE OF RENEWABLE ENERGY CERTIFICATES

2.1 Determination of City’s Electric Load. No later than the June 1 prior to each year of the Contract Delivery Term, City shall provide NYSERDA a preliminary projection of its Forecast Electric Load, and no later than September 1 prior to each year of the Contract Delivery Term, City shall provide NYSERDA its Forecast Electric Load; provided that such requirements shall not apply to the period described in Section 2.6(c).

2.2 Monthly Tier 4 REC Price; Monthly Obligation Payment. The price payable by City to NYSERDA for each Tier 4 REC generated in a month and purchased hereunder (the “Monthly Tier 4 REC Price”) shall be an amount equal to the sum of (A) the lesser of (i) the weighted average of the CHPE Monthly Tier 4 REC Price and the CPNY Tier 4 REC Price, and (ii) the CHPE Monthly Tier 4 REC Price; *plus* (B) an Adder. City shall pay NYSERDA each month an amount (the “Monthly Obligation Payment”) equal to the product of (x) the Monthly Tier 4 REC Price for such month and (y) the Forecast Quantity for such month. Details regarding the calculation of the Monthly Tier 4 REC Price and Monthly Obligation Payment are set forth in Schedule 2.2, which schedule may be updated and revised over the term of this Agreement upon mutual consent of the Parties.

2.3 Statements and Invoicing.

(a) For each month of the Contract Delivery Term, NYSERDA shall provide an invoice to City showing the calculation of the Monthly Tier 4 REC Price and the Monthly Obligation Payment pertaining to such month. Each such invoice shall be accompanied by a statement affirming that the amount of Tier 4 RECs associated with such invoice have been actually received by NYSERDA. Upon receipt of payment from City, NYSERDA will set aside or designate the Forecast Quantity for that month for future Delivery to City pursuant to Section 2.5(a). All amounts under each monthly invoice provided pursuant to this Section 2.3(a) shall be due within fifteen (15) calendar days from City's receipt thereof, subject to the provisions of Section 2.3(c), below.

(b) Within sixty (60) calendar days following the Metered Electric Load for a full calendar year having become available to NYSERDA, or as otherwise agreed to by the City, which agreement will not be unreasonably withheld, conditioned, or delayed, NYSERDA shall provide to City a statement showing revisions to the Monthly Obligation Payments based on the difference between the Forecast Quantity and Actual Quantity for such calendar year as set forth in the Annual Reconciliation. The statement shall be accompanied by an invoice (each, a "Reconciliation Invoice") showing the net balance owed or due as a credit to City after giving effect to such Annual Reconciliation. The Parties agree to work together to develop an appropriate mechanism and procedure related to the Annual Reconciliation process, which shall be finalized prior to the commencement of the Contract Delivery Term but may be updated and revised over the term of this Agreement upon mutual consent of the Parties.

(c) In the event City disputes any invoice, it shall notify NYSERDA within fifteen (15) calendar days after receipt of the invoice and state with reasonable detail the reason(s) for the dispute. Such disputes shall be resolved in accordance with Section 7.6.

2.4 Payments and Credits. Payments on each invoice provided by NYSERDA pursuant to Section 2.3 shall be due to NYSERDA within fifteen (15) calendar days of the date thereof, subject to the provisions of Section 2.3(c). Any and all payments due to NYSERDA shall be made by wire/ACH payment as follows:

Bank:
Account No.:
ABA:
Account Name:



When making payment, City shall include the Customer ID and Invoice Number set forth on NYSERDA's invoice. The information for payment specified in this Section 2.4 may be changed from time to time by written notice by either Party to the other Party without amendment of this Agreement.

2.5 Deliver/Delivery.

(a) Upon receipt of payment from City of all amounts due pursuant to a monthly invoice provided under Section 2.3, NYSERDA shall set aside or designate for future Delivery to City Tier 4 RECs equal to the amount of Tier 4 RECs purchased under such invoice. On an

annual basis, within fifteen (15) calendar days following receipt of payment of the Reconciliation Invoice from City, NYSERDA shall Deliver to the City NYGATS Account Tier 4 RECs in a quantity equal to the Actual Quantity for the prior calendar year, as set forth in the Annual Reconciliation. To the extent that such Actual Quantity varies from the number of Tier 4 RECs that had been set aside or designated for such calendar year, NYSERDA shall Deliver to City additional Tier 4 RECs so that NYSERDA shall have Delivered to City Tier 4 RECs equal to the Actual Quantity for such calendar year.

(b) Upon notification of Delivery by NYSERDA, City shall be obligated to accept Delivery in NYGATS within 10 calendar days. NYSERDA shall transfer title to the Tier 4 RECs to City free and clear of any lien or other encumbrance at the time of Delivery.

(c) In the event that in any calendar year the Actual Quantity for that year exceeds the number of Tier 4 RECs NYSERDA is able to Deliver to City, City shall have the option of purchasing Offshore Wind RECs in an amount equal to the balance of Tier 4 RECs that were not Delivered. The purchase price for such Offshore Wind RECs shall be set at the price of Offshore Wind RECs charged to other load-serving entities for the same period of time.

(d) Each year, NYSERDA shall not Deliver Tier 4 RECs to any voluntary purchaser other than City until it has fulfilled the Delivery to City as set forth in this Section 2.5.

2.6 Stub Year.

(a) The Parties recognize that either or both of the CHPE and CPNY Projects may commence commercial operation and begin producing Tier 4 RECs at a point in time that differs from the annual periods contemplated in this Agreement. The Parties agree that all requirements set forth herein for the first year of the Contract Delivery Term shall be addressed in the same manner as such requirements are addressed in any program NYSERDA adopts with respect to jurisdictional load-serving entity purchases of Tier 4 RECs, provided that such provisions for the Stub Year are in accordance with City's appropriations requirements and procedures.

(b) Notwithstanding anything to the contrary in Section 2.6(a), no later than March 1 falling immediately prior to the City Fiscal Year in which NYSERDA reasonably expects it could first purchase Tier 4 RECs pursuant to the Purchase Agreements, NYSERDA shall provide written notice to City setting forth the earliest date on which NYSERDA reasonably expects it could first purchase Tier 4 RECs pursuant to the Purchase Agreements (the "Inside Date"). If NYSERDA first purchases Tier 4 RECs pursuant to the Purchase Agreements prior to the Inside Date, the Contract Delivery Term shall nonetheless not commence until the Inside Date.

(c) No later than thirty (30) calendar days following the date of the notice referred to in Section 2.6(b), City shall provide a Forecast Electric Load for the period commencing on the Inside Date and ending on December 31 of the same year, which NYSERDA shall use for purposes of calculating the Forecast Quantity for such period; provided that if the Inside Date occurs during the subsequent calendar year, City shall provide its Forecast Electric Load pursuant to Section 2.1 for the period commencing on the Inside Date and ending on December 31 of the same year.

2.7 Taxes/Fees. NYSERDA shall pay any taxes or other fees, if any, imposed on the creation, or ownership of Tier 4 RECs and Offshore Wind RECs up to the date of Delivery. City will pay any taxes or other fees, if any, imposed on the receipt or ownership of Tier 4 RECs and Offshore Wind RECs on and after the date of Delivery to the extent that City would be subject to such taxes or fees.

2.8 Term. This Agreement shall be effective as of the Effective Date and shall terminate on the sooner to occur of (i) the expiration of the Contract Delivery Term, and (ii) the effective date of termination in accordance with applicable provisions of this Agreement.

2.9 Cessation of CHPE Purchases.

(a) In the event City asserts that NYSERDA has breached the commitments regarding Indigenous Communities in Quebec set forth in Schedule 2.9 hereof (“Indigenous Communities Obligations”), it shall deliver written notice of such assertion to NYSERDA, which notice shall include a reasonably detailed description of the alleged breach of such Indigenous Communities Obligations. Within fifteen (15) calendar days of NYSERDA’s receipt of such written notice, NYSERDA shall cause HQ to participate with NYSERDA and City in good faith discussions of such alleged breach and negotiations of possible cures thereof. Upon the Parties’ mutual agreement, the City or NYSERDA may invite representatives of the Indigenous Communities to participate in these discussions. In the event that, after thirty (30) calendar days from commencement of such good faith discussions and negotiations, the existence of a breach remains unresolved, or possible cures to a claimed or acknowledged breach have not been agreed upon, a mediator reasonably acceptable to the Parties shall be promptly appointed to assist further good faith discussions among City, HQ and NYSERDA of City’s assertions. In the event that, after thirty (30) calendar days from the commencement of such mediation, the existence of a breach remains unresolved, or possible cures to a claimed or acknowledged breach have not been agreed upon, each Party shall be permitted to exercise its legal and equitable rights as it deems appropriate.

(b) In the event the Parties agree, whether as a result of their good faith discussions, mediated discussions, or otherwise, that NYSERDA has breached the Indigenous Communities Obligations, City, as its exclusive remedy for such breach, shall not be obligated to purchase from NYSERDA any Tier 4 RECs created under the CHPE Agreement effective as of the date of such agreement. In the event either Party exercises its legal rights and receives a judicial decision that NYSERDA has breached the Indigenous Communities Obligations, City, as its exclusive remedy for such breach, shall not be obligated to purchase from NYSERDA any Tier 4 RECs created under the CHPE Agreement effective as of the date of such decision.

(c) During the pendency of any dispute described in Section 2.9(a), to the extent that, during any month, there are insufficient RECs created under the CPNY Agreement to equal the Forecast Quantity for such month (a “Monthly REC Shortfall”), NYSERDA shall set aside or designate Offshore Wind RECs in the amount of such Monthly REC Shortfall but shall charge City the Monthly Tier 4 REC Price for the entire Forecast Quantity (*i.e.*, inclusive of the Monthly REC Shortfall). If City’s assertion is determined to be valid, whether as a result of an agreement or judicial decision, NYSERDA shall be required to compensate City for all amounts paid by City in excess of the applicable monthly prices of Offshore Wind RECs charged to other

load-serving entities with respect to all Offshore Wind RECs purchased by City pursuant to this Section 2.9(c) (the “Excess OREC Payments”). If City’s assertion is determined to be invalid, whether as a result of an agreement or judicial decision, NYSERDA shall be entitled to retain all Excess OREC Payments.

2.10 Obligations Subject to Budget Allocation. In recognition that the long-term nature of this Agreement, requiring payment by the City in subsequent fiscal years after the fiscal year that includes the Effective Date, this Agreement is subject to the appropriation of funds for such subsequent City fiscal year. The City shall have no obligation to purchase Tier 4 RECs beyond the amount of funds appropriated that can be used for such purpose. Notwithstanding anything to the contrary set forth herein, the City shall include in its preliminary and executive budgets for each fiscal year the monetary obligations set forth in this Agreement anticipated to become due in such fiscal year.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 NYSERDA Representations and Warranties. NYSERDA hereby represents and warrants to City as follows:

(a) NYSERDA has and, at all times during the Term will have, all necessary power and authority to execute this Agreement and to perform its obligations hereunder.

(b) The execution of and performance under this Agreement by NYSERDA has been duly authorized by all necessary action and does not violate any of the terms or conditions of NYSERDA governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to NYSERDA. This Agreement constitutes the valid and binding obligation of NYSERDA enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors’ rights and remedies generally and to general principles of equity.

(c) There is no pending or (to NYSERDA’s knowledge) threatened litigation, arbitration or administrative proceeding that materially adversely affects NYSERDA’s ability to perform its obligations under this Agreement.

3.2 City Representations and Warranties. City hereby represents and warrants to NYSERDA as follows:

(a) City has received all required approvals from the New York City Corporation Counsel, the New York City Mayor’s Office of Contract Services, and the New York City Office of Management and Budget in connection with this Agreement as provided herein.

(b) The execution and delivery by City of this Agreement do not, and the performance by the City of its obligations hereunder will not, violate or conflict with any constitutional provisions or law of the State of New York or administrative regulation or the

provisions of any judgment, loan agreement, note, resolution or agreement to which City is a party or otherwise subject.

(c) As of the time of the execution and delivery of this Agreement, no action, suit, proceeding or investigation is pending or, to the knowledge of the signatory of this Agreement on behalf of City without conducting an investigation, threatened against City in any court or before any Governmental Authority (i) seeking to restrain or enjoin the execution or delivery of this Agreement or in any way contesting or affecting the validity of this Agreement or contesting the powers of City to perform its obligations contained in this Agreement; or (ii) in which a final adverse decision would materially adversely affect the performance by City of its obligations contained in this Agreement. The term “Governmental Authority” means and refers to any legislative body or governmental official, department, commission, board, bureau, agency, instrumentality, or body having jurisdiction over City.

ARTICLE 4: EVENTS OF DEFAULT

4.1 Events of Default. For purposes of and during the Term, each of the following shall constitute an event of default (“Event of Default”) by a Party:

(a) if a Party materially breaches any or all of its obligations as described in this Agreement and such breach is not cured within thirty (30) calendar days of written notice of such breach from the other Party or upon the termination of any extension to the initial 30 calendar day cure period as mutually agreed to by the parties;

(b) if any representation or warranty made by a Party in Article 3 of this Agreement proves to have been misleading or false in any material respect when made;

(c) if City fails to appropriate funds necessary to satisfy its monetary obligations under this Agreement;

(d) if NYSERDA is unable to deliver a combination of Tier 4 RECs and Offshore Wind RECs to City over a period of two consecutive calendar years equal to the Actual Quantity for the same period; provided that such event shall not constitute an Event of Default until after City first engages in good faith negotiations with NYSERDA for a period of at least thirty (30) calendar days regarding a potential cure or other means to resolve this deficiency; and/or

(e) if a Party:

(i) makes an assignment or any general arrangement for the benefit of its creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it; or

(ii) otherwise becomes bankrupt or insolvent (however evidenced); or becomes unable to pay its debts as they become due.

ARTICLE 5: REMEDIES UPON DEFAULT AND TERMINATION

5.1 Remedies. Upon an Event of Default, the non-defaulting Party may (a) terminate this Agreement upon written notice to the defaulting Party, (b) withhold any payments due in respect of this Agreement, (c) withhold Delivery of Tier 4 RECs or Offshore Wind RECs otherwise required under this Agreement, and/or (d) exercise its legal rights to secure payment of amounts due and owing to the non-defaulting Party by the defaulting Party. Notices by the Parties pursuant to this section shall be in accordance with Section 6.1.

5.2 Exclusive Remedy and Limitation of Liability. The remedies set forth in this Article 5 shall be the sole and exclusive remedies of the Parties if there is an Event of Default, and a Party's liability shall be limited as set forth in this Article. In no event shall any other liability be incurred by either Party for any obligations that arise under this Agreement, including, but not limited to, liability for consequential, incidental, punitive, exemplary, or indirect damages in tort, contract, or otherwise. All other remedies or damages at law are hereby waived.

5.3 Obligation to Mitigate. Each Party shall make reasonable efforts to mitigate its economic losses associated with an Event of Default by the other Party. Reasonable efforts on the part of City shall include, at a minimum, attempting to purchase RECs from renewable resources directly connected to the electric grid within New York City. Reasonable efforts on the part of NYSERDA shall include, at a minimum, attempting incremental voluntary sales of the Tier 4 RECs that would reduce the cost of the Tier 4 program to New York State ratepayers.

5.4 Termination for PSC Determination. This Agreement shall terminate thirty (30) calendar days after the PSC makes a determination, by Order, that City's continued performance under this Agreement and concurrent non-participation in CES tiers other than Offshore Wind no longer results in net financial savings to New York ratepayers, provided that this termination shall be suspended in the event either Party challenges the PSC's Order, and such suspension shall continue until all appeal rights have been exhausted.

5.5 Termination for Failure to Approve Purchase Agreements. Each Party's obligations under this Agreement are subject to NYSERDA obtaining PSC approval of both Purchase Agreements. The City shall have the right to terminate this Agreement upon written notice to NYSERDA delivered not more than thirty (30) calendar days after the PSC issues an Order containing a determination not to approve both Purchase Agreements, provided that if one or more timely petitions for rehearing of the PSC Order is submitted, this right shall arise subsequent to the date of issuance of a PSC Order on the rehearing petition(s).

5.6 Termination for Failure to Commence Operations. The City shall have the right to terminate this Agreement, in its sole discretion, upon written notice to NYSERDA, in the event both the CHPE Project and CPNY Project have not commenced commercial operation by June 30, 2031.

5.7 Termination of Purchase Agreements. In the event that both Purchase Agreements are terminated in accordance with the terms thereof, NYSERDA shall immediately notify City and City shall have the option, in its sole discretion, to convert this Agreement to a purchase

agreement for Offshore Wind RECs with the purchase price for such Offshore Wind RECs set at the price of Offshore Wind RECs charged to load-serving entities for the same period of time, and appropriate adjustments to other terms. If City exercises this option, the Parties agree to meet and negotiate in good faith regarding changes to the terms of this Agreement necessary, if any, to effectuate City's decision. If City declines to exercise this option, this Agreement shall terminate immediately.

5.8 Termination Upon Final Determination of Breach of Indigenous Communities Obligations. In the event that (a) a final binding determination has been made in accordance with Section 2.9 that NYSERDA has breached the Indigenous Communities Obligations, and (b) the CPNY Project fails to commence generating Tier 4 RECs by June 30, 2031 or fails to produce Tier 4 RECs over two consecutive calendar years equal to the Actual Quantity for the same period, City shall have the right, upon written notice to NYSERDA, either to (i) terminate this Agreement, or (ii) convert this Agreement to a purchase agreement for Offshore Wind RECs with the purchase price for such Offshore Wind RECs set at the price of Offshore Wind RECs charged to load-serving entities for the same period of time, and appropriate adjustments to other terms.

5.9 Termination Upon Mutual Agreement. This Agreement may be terminated upon the mutual agreement of the Parties.

5.10 Liability Upon Termination. Upon termination of this Agreement for any reason set forth in Article 5, neither Party shall have any further obligation or liability to the other Party other than that (i) City shall be obligated to pay for Tier 4 RECs accrued on its behalf pursuant to this Agreement prior to termination, and (ii) NYSERDA will Deliver to City NYGATS Account any Tier 4 RECs for which City has made payment prior to termination.

5.11 Exceptions. None of Sections 5.2 or 5.10 shall apply to any Event of Default arising from (i) City's failure to comply with its obligations under Section 2.10 or (ii) an act of willful misconduct of either Party.

ARTICLE 6: NOTICES

6.1 Notices.

(a) All notices, requests, consents, approvals and other communications which may or are required to be given by either party to the other under this Agreement shall be in writing and shall be transmitted either:

- (i) via certified or registered United States mail, return receipt requested;
- (ii) by personal delivery;
- (iii) by expedited delivery service; or
- (iv) by e-mail, return receipt requested.

(b) Such notices shall be addressed as follows, or to such different addresses as the parties may from time-to-time designate as set forth in paragraph (c) below:

To City: Department of Citywide Administrative Services
Attn: Deputy Commissioner, Energy Management
1 Centre Street
New York, New York 10007-1602
Email: tier4@dcas.nyc.gov

With a copy to: Department of Citywide Administrative Services
Attn: Office of General Counsel
1 Centre Street
New York, New York, 10007-1602
Email: ljones@dcas.nyc.gov

To NYSERDA: NYSERDA
Attn: Office of the General Counsel
17 Columbia Circle
Albany, New York 12203-6399
Email: ceslegal@nyserda.ny.gov

With a copy to: NYSERDA
Attn: Large Scale Renewables
17 Columbia Circle
Albany, New York 12203-6399
Email: ces@nyserda.ny.gov

(c) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt of an email acknowledgement of receipt.

(d) Each Party may, from time to time, specify any new or different address in the United States as its address for purpose of receiving notice under this Agreement by giving fifteen (15) calendar days written notice to the other Party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the Parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

ARTICLE 7: MISCELLANEOUS

7.1 Force Majeure.

(a) “Force Majeure” for purposes of this Agreement means an event or circumstance that was not reasonably anticipated as of the Effective Date: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. A Force Majeure event for purposes of this Agreement shall include a Force Majeure event affecting the CHPE Project or

CPNY Project. For avoidance of doubt, to the extent meeting the foregoing requirements, examples of events that may constitute Force Majeure include:

acts of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise), blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, cyber-attack, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), pandemics (and actions undertaken by governments in response thereto), fire, flood, lightning, earthquake, hurricane, tornado, waves or winds of extreme force, extreme accumulation of snow or ice, epidemic, explosion or any similar cataclysmic occurrence, acts, inaction or restraints of a governmental authority (excluding the Parties) which temporarily or permanently prevent required performance under this Agreement.

Under no circumstances shall Force Majeure include (x) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, or (y) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary approvals, a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure or be the basis for a claim of Force Majeure, except in each case if any such failure is caused by an underlying Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist or would exist if the Party claiming the Force Majeure used commercially reasonable efforts to cure such circumstances, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of commercially reasonable due diligence. Neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Each Party may terminate this Agreement in the event a Party's inability to perform its obligations, as described in Section 7.1(b), persists for more than twenty-four (24) consecutive months. Any such termination shall be with no further obligation or liability to the other Party other than that NYSERDA will Deliver to City NYGATS Account any Tier 4 RECs for which City has made payment prior to termination.

(d) In the event NYSERDA is unable to perform its obligations under this Agreement due to a Force Majeure, and the Force Majeure persists for more than six (6) months, City shall have the option of purchasing Offshore Wind RECs in an amount equal to the quantity of Tier 4 RECs that would have been set aside or designated for future Delivery to City for any continuing portion of such period of Force Majeure after such initial six (6) months and shall use commercially reasonable efforts to make Offshore Wind RECs available to City to purchase covering the initial six (6) month period. The invoicing, pricing, and Delivery provisions of Sections 2.3, 2.4, and 2.5 shall apply during the period this provision is in effect, and the pricing shall be as set forth in Section 2.5(c).

7.2 Approvals. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to New York City Charter § 328.

7.3 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect provided that the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby. If any provision of this Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as will enable it to be enforced. In lieu of any illegal, void or unenforceable provision, the Parties will endeavor to add to this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

7.4 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof are breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

7.5 Offshore Wind REC Option. The Parties acknowledge that, City's ability to purchase and NYSERDA's ability to sell Offshore Wind RECs as provided in Sections 2.5(c), 2.9(c), 5.7, 5.8 and 7.1(d) of this Agreement is subject to the creation of a sufficient number of Offshore Wind RECs for Delivery to City at such time as such option is exercised.

7.5 Dispute Resolution. The Parties shall use good faith efforts to settle all disputes arising under this Agreement. In the event that a dispute cannot be resolved in the normal course of business, there will be an attempt to resolve the dispute by negotiation between representatives who have the authority to settle the controversy. To the extent the dispute is not resolved under this process, non-binding mediation may be elected by said representatives by written notice. The dispute may be submitted to an expedited, non-binding mediation proceeding before a qualified mediator in accordance with the mediation rules of the American Arbitration Association. Any mediation will be considered an effort to settle the dispute and no written decision will be issued. The Parties reserve the right to seek judicial relief at any time.

7.6 Assignment. Except as specifically provided otherwise in this Section 7.6, the assignment, transfer, conveyance, subcontracting or other disposal of this Agreement or any of

either Party's rights, obligations, interests or responsibilities hereunder, in whole or in part, without the express consent in writing of the other Party shall be void and of no effect as to such Party. Such consent shall not be unreasonably withheld.

Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed.

7.7 Entire Agreement; Amendment. This Agreement embodies the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings relating to the subject matter hereof. Except as otherwise expressly provided for herein, this Agreement may be amended, modified, changed, waived, discharged or terminated only by an instrument in writing, signed by both Parties.

7.8 Further Assurances. The Parties agree to cooperate and execute supplementary documents and take additional actions, in each such case, that are reasonably requested by the other Party, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement. Each Party shall have discretion to determine which requests by the other Party are reasonable. If, through mistake, oversight or otherwise, any provision of law required by the laws of the State or City of New York is not contained herein, or is not contained herein in correct form, this Agreement shall, upon the application of either Party, promptly be amended so as to comply with the laws of the State and City of New York with respect to the inclusion in this Agreement of all such provisions.

7.9 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts executed and to be performed in New York State without regard to its conflicts of laws principles. Subject to any applicable requirements of the New York Civil Practice Laws and Rules, the parties irrevocably acknowledge and accept that all actions arising under or relating to this Agreement, and the transactions contemplated hereby and thereby shall be brought exclusively in a United States District Court or New York State Court located in New York County, New York having subject matter jurisdiction over such matters, and each of the Parties hereby consents to and accepts such personal jurisdiction of, and waives any objection as to the laying of venue in, such courts for purposes of such action.

7.10 Headings. The Article and Section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

7.11 Construction. This Agreement is the product of negotiation and joint effort between the Parties. Accordingly, the language, terms and conditions of this Agreement shall not be construed more strictly against either of the Parties in the event a question of interpretation, construction or meaning should hereafter arise.

7.12 No Third-Party Beneficiaries. Nothing herein is intended to or should be construed to create any rights of any kind whatsoever in third persons not parties to this Agreement.

7.13 Freedom of Information Law. The Parties acknowledge that both Parties are subject to and must comply with the requirements of New York's Freedom of Information Law ("FOIL;" see Public Officers' Law Article 6); 21 NYCRR Part 501. The FOIL Law (Public Officers Law § 87(d)(2)) provides an exception to disclosure for records or portions thereof for numerous reasons, including but not limited to protected material that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." If either Party receives a request from a third party for information or a document received from the other Party which has been marked "Confidential" or "Proprietary," the Parties agree that they will process such request under the procedures provided by FOIL regulations (21 NYCRR Part 501).

7.14 Claim of Confidentiality. Information of any tangible form including any document that either Party wishes to be protected from disclosure to third parties, including this Agreement must be marked "Confidential" or "Proprietary" at the time such information is provided to the other Party. Notwithstanding the foregoing, NYSERDA, in accordance with the provisions of the CES Order, shall be permitted to report to the New York State Department of Public Service through its Records Access Officer seeking confidential treatment as appropriate, as to the amounts received from City for REC purchases as against the total due each month and on City compliance or non-compliance, generally, with the terms of this Agreement.

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

[Signature Page Follows]

IN WITNESS WHEREOF, and in consideration of the foregoing, and intending to be bound thereto, the Parties have caused this Agreement to be executed as of the date first written above.

NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

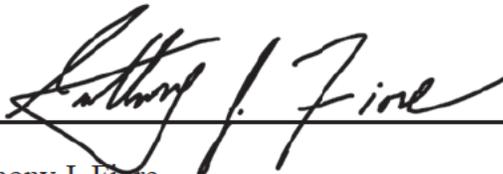
Signature: **Cheryl Glanton** Dig italy signed by Cheryl Glanton
DN: cn=Cheryl Glanton, o=NYSERDA, ou=Director of Contract
Management, email=cheryl.glanton@nyserda.ny.gov, c=US
Date: 2021.12.17 17:26:58 -05'00'

Name: Cheryl M. Glanton

Title: Director of Contract Management

Date: December 17, 2021

THE CITY OF NEW YORK

Signature: 

Name: Anthony J. Fiore

Title: Deputy Commissioner, Chief Energy Management Officer
New York City Department of Citywide Administrative Services

Date: December 17, 2021

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

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Signature: _____

Name: _____

Title: _____

Date: _____

THE CITY OF NEW YORK

Signature: _____

Name: Anthony J. Fiore

Title: Deputy Commissioner, Chief Energy Management
Officer
New York City Department of Citywide
Administrative Services

Date: December 17, 2021

Approved as to Form and Certified
as to Legal Authority

Isabel Galis-Menendez KS

Acting Corporation Counsel

Date: 12/17/2021

SCHEDULE 2.2

CALCULATIONS OF MONTHLY TIER 4 REC PRICE AND AND MONTHLY OBLIGATION PAYMENT

1. Weighted Average REC Price

Each month, the weighted average price of Tier 4 RECs (“WAP”) shall be calculated as follows:

CHPE Monthly Tier 4 REC Price * Monthly Volume of Tier 4 RECs purchased by NYSERDA from the CHPE Project
Monthly Summation of the Volume of Tier 4 RECs purchased by NYSERDA
from the CHPE and CPNY Projects other than RECs compensated based on a share
of revenues earned by NYSERDA from sales of such Tier 4 RECs to voluntary
purchasers

+

CPNY Monthly Tier 4 REC Price * Monthly Volume of Tier 4 RECs purchased by NYSERDA from the CPNY Project
Monthly Summation of the Volume of Tier 4 RECs purchased by NYSERDA
from the CHPE and CPNY Projects other than RECs compensated based on a share
of revenues earned by NYSERDA from sales of such Tier 4 RECs to voluntary
purchasers

3. Monthly Obligation Payment

(a) If the WAP < CHPE Monthly Tier 4 REC Price,

Monthly Obligation Payment = (WAP + Adder) * Quantity

(b) If the WAP > CHPE Monthly Tier 4 REC Price,

Monthly Obligation Payment = (CHPE Monthly Tier 4 REC Price + Adder) * Quantity

SCHEDULE 2.9

INDIGENOUS COMMUNITY COMMITMENTS AND OBLIGATIONS MADE BY HQ

NYSERDA shall cause HQ to undertake the following obligations and commitments with respect to Indigenous Communities:

Definitions:

As used in this Schedule 2.9, the following terms will have the following meanings:

“Additional QRE Resource” means a generation facility that has first achieved QRE Commercial Operation (including after refurbishment or other repowering) after October 15, 2020 and that produces electricity from solar energy, onshore wind energy or any other energy source from technology that would qualify for Tier 1 of the New York State Clean Energy Standard.

“QRE Commercial Operation” means a state of operational readiness under which (i) generating capacity is available and physically producing electric energy, and (ii) all rights, abilities, permits and approvals to schedule and deliver energy to the point of transmission system interconnection have been obtained.

1. HQ will cause Hydro-Québec (“HQ Parent”) to abide by the terms of its memorandum of understanding dated May 10, 2021 with the Mohawk Council of Kahnawà:ke concerning the establishment between them of a joint ownership arrangement with respect to the Québec portion of the transmission line that is part of the CHPE Project (“Québec Transmission Line”). Key terms of this ownership arrangement are expected to include:

(a) The Mohawk Council of Kahnawà:ke will acquire an equity or equivalent stake in the ownership of the Québec Transmission Line, and as such will be entitled to distributions reflecting that participation.

(b) HQ Parent will use commercially reasonable efforts to foster certain contracting opportunities for Kahnawà:ke contractors in relation to the construction of the Québec Transmission Line.

(c) HQ Parent and the Mohawk Council of Kahnawà:ke will work together to ensure that the perspective of the Mohawks of Kahnawà:ke is taken into account in the environmental assessment related to the Québec Transmission Line, namely the archaeological potential study, the archeological surveys and, if required, the archeological excavations.

2. HQ will cause HQ Parent to fulfill its obligations under the contract to purchase the electricity to be produced by the approximate 204 MW Apuiat wind farm, which will be a generation facility that has first achieved commercial operation after October 15, 2020 and that produces electricity from solar energy, onshore wind energy or any other energy source from technology that would qualify for CES Tier 1 and is jointly owned by several Québec Innu communities and Boralex Inc. Key elements of that project and/or the contract include:

(a) The wind farm will be built within the limits of the Nitassinan, which the Innu TakuaiKAN Uashat mak Mani-utenam (First Nation) considers to be its traditional territory, on public lands in the City of Port-Cartier in the Côte-Nord Region.

(b) The Québec Innu communities and Boralex are 50-50 partners in the project. The partners will equally share the profits generated by the sale of electricity as per the terms of their contract with HQ Parent.

(c) HQ Parent will purchase approximately 0.7 TWh annually of the electricity from the Apuiat wind farm under a 30-year contract.

3. HQ will cause HQ Parent:

(a) To maintain its efforts to prioritize actions taking into account the rights, interests and perspectives of Indigenous peoples in a manner consistent with any principles or declarations regarding Indigenous peoples that the Canadian Government, Québec Government or HQ Parent may adopt, particularly regarding the use of their traditional territories.

(b) In relation to any new power transmission line(s) to be constructed by HQ Parent to connect any Additional QRE Resource added to the CHPE Project pursuant to Section 2.7 of the CHPE Agreement to HQ Parent's existing power transmission network, to consult any Indigenous groups identified by Canadian government authorities as having filed a credible comprehensive land claim and/or any Indigenous groups identified according to Canadian constitutional law as having established rights or credible but unproven claims to the land where said power transmission line(s) are located, with the objective of reaching agreement on proper accommodation measures taking into consideration the strength of the prima facie Aboriginal claim and the seriousness of the impact on the underlying Aboriginal or treaty right. Such consultation shall be documented including with appropriate environmental evaluations in view of the contemplated power transmission line and undertaken to assess potential impacts on the relevant Indigenous group(s) and proper accommodation. Upon request by NYSERDA or HQ, and if agreed to by the Indigenous group(s) involved, said documentation will be made available to NYSERDA, HQ, and City.

(c) In relation to any refurbishment of an existing power plant identified in the CHPE Agreement and leading to (i) the replacement or modification of technical equipment that will result in changes in maximum or minimum water levels in the watercourse or (ii) material environmental impacts, to consult any Indigenous groups identified by Canadian government authorities as having filed a credible comprehensive land claim and/or any Indigenous groups identified according to Canadian constitutional law as having established rights or credible but unproven claims to the land where said existing power plant is located, with the objective of reaching agreement on proper accommodation measures taking into consideration the strength of the prima facie Aboriginal claim and the seriousness of the impact on the underlying Aboriginal or treaty right. Such consultation shall be documented including with appropriate environmental evaluations in view of the contemplated refurbishment and undertaken to assess potential impacts on the relevant Indigenous group(s) and proper accommodation. Upon request by NYSERDA or HQ, and if agreed to by the Indigenous group(s) involved, said documentation will be made available to NYSERDA, HQ, and City.

(d) To conduct whenever required under applicable Québec (provincial) and Canadian (federal) statutory requirements, an impact assessment regarding:

(i) the construction by HQ Parent of any new power transmission line(s) to connect any Additional QRE Resource added to the CHPE Project pursuant to Section 2.7 of the CHPE Agreement to HQ Parent's existing power transmission network; or

(ii) any refurbishment of an existing power plant identified in the CHPE Agreement and leading to the replacement or modification of technical equipment that will result in changes in maximum or minimum water levels in the watercourse, the results of which will be shared in a timely manner with the relevant Indigenous groups identified according to Canadian constitutional law who will be invited to provide their comments and concerns, if any. If requested by the Indigenous group, such comments and responses may be made public on the HQ Parent website or through means agreed upon between HQ Parent and the relevant Indigenous groups.