

**CHAMPLAIN-HUDSON POWER EXPRESS PROJECT
ENVIRONMENTAL TRUST AGREEMENT**

This Environmental Trust Agreement (the “Agreement”) is made on the ___th day of October, 2013, entered into between Champlain Hudson Power Express, Inc. and CHPE Properties (collectively, the “Grantors”), the Hudson River Foundation (the “Trust Administrator”) and _____ (the “Trustee”).

RECITALS

WHEREAS, on April 18, 2013, the New York State Public Service Commission issued an Order Granting the Certificate of Environmental Compatibility and Public Need that approved with limited changes the Joint Proposal of Settlement filed by the Signatory Parties thereto in Case 10-T-0139; and

WHEREAS, the Certificate authorized the Grantors to construct and operate a 1,000 MW High Voltage, Direct Current transmission facility running from New York’s border with the Province of Quebec to New York City (the “Facility”), portions of which are to be located in the waters of Lake Champlain and the Hudson, Harlem and East Rivers; and

WHEREAS, in recognition of the ecological significance of the watersheds of Lake Champlain, and the Hudson, Harlem and East Rivers, the Certificate provides that the Grantors will supply a total of \$117 million in funds to establish and maintain the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust (“Trust”) for the benefit of these waterbodies on the terms and conditions set out therein; and

WHEREAS, the Order establishes the Certificate Conditions to govern construction and operation of the Facility, including Condition No. 165 of the Certificate Conditions (“Certificate Condition 165”) which provides that the Trust shall be established solely for the purposes of protecting, restoring, and improving aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries, (collectively, the “Trust Area”) in order to minimize, mitigate, study, and/or compensate for the short-term adverse aquatic impacts and potential long-term aquatic impacts and risks to these water bodies from construction and operation of the Facility and for the administration of the Trust to the extent expressly authorized in the Certificate; and

WHEREAS, the types of projects for which Certificate Condition 165 authorizes monies in the Trust to be used include, but are not limited to, studies, monitoring, conservation, restoration, preservation, clean-up, data sampling and analysis, and education and outreach relating to fish, wildlife, plant, habitat, and other natural and cultural resources in the Trust Area; and

WHEREAS, Certificate Condition 165 establishes the schedule of Grantors’ contributions to the Trust, including the first payment of \$2.5 million which is due within thirty (30) days of the closing of financing for the costs of constructing the Facility; and

WHEREAS, Certificate Condition 165 further provides that the Trust shall be governed by a Governance Committee established as provided therein; and

WHEREAS, on June 17, 2013, the Commission approved the Governance Committee Agreement submitted by Grantors to provide for the establishment of the Governance Committee; and

WHEREAS, at its meeting on June 28, 2013, the Governance Committee decided to retain the Hudson River Foundation to act as the Trust Administrator; and

WHEREAS, Certificate Condition 165 further requires Grantors to execute and file a Trust Agreement with the Trustee Bank.

NOW, THEREFORE, in exchange for the covenants and commitments contained herein and intending to be legally bound thereby, Grantors, the Trust Administrator and the Trustee Bank stipulate and agree as follows:

Section 1. *Definitions*. As used in this Agreement:

(a) The term “Grantors” means the owners or operators of the Facility who enter into this Agreement and any successors or assigns of the Grantors.

(b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term “Commission” means the New York State Public Service Commission or its duly authorized designee.

(d) The Term “Certificate Condition 165” means Condition No. 165 of the Certificate of Environmental Compatibility and Public Need issued to Grantors by the Commission by order dated April 18, 2013 in Case 10-T-0139.

(e) The Term “Governance Committee Agreement” means the agreement providing for the establishment of a Governance Committee for the Trust established pursuant to Certificate Condition 165 and approved by the Commission by order dated June 17, 2013 in Case 10-T-0139.

(f) The Term “Governance Committee” means the Governance Committee established pursuant to the Governance Committee Agreement.

(f) The Term “Trust Administrator” means the Trust Administrator designated by the Governance Committee as provided in the Governance Committee Agreement.

(g) The Term “Trust” shall mean the Hudson River and Lake Champlain Habitat Enhancement, Restoration, and Research/Habitat Improvement Project Trust.

Section 2. *Purposes of the Trust.* This Agreement pertains to the formation of the Trust solely for the purposes of protecting, restoring, and improving aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries, in order to minimize, mitigate, study, and/or compensate for the short-term adverse aquatic impacts and potential long-term aquatic impacts and risks to these water bodies from Facility construction and operation and for the administration of the Trust to the extent expressly authorized in the Certificate Condition 165.

Section 3. *Establishment of the Trust.* The Grantors and the Trustee hereby establish the Trust, which shall consist of the funds paid by Grantors to the Trustee to constitute the body of the Trust as provided in Certificate Condition 165.

Section 4. *Payment for Authorized Undertakings of the Trust.* The Trustee shall make payment from the Trust as the Governance Committee shall direct in writing, confirmed in writing by the Trust Administrator, to provide for the payment of the costs of projects approved by the Governance Committee for the protection, restoration, and improvement of aquatic habitats and fisheries resources in the Hudson River Estuary, the Harlem and East Rivers, Lake Champlain, and their tributaries and for the administration of the Trust. In addition, the Trustee shall refund to the Grantors such amounts as the Commission specifies in writing. Upon refund, such funds shall no longer constitute part of the Trust defined herein.

Section 5. *Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Trust and keep the funds of the Trust invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Governance Committee may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In the absence of any instructions, the funds of the Trust shall be invested in the Money Market Account with the _____ Bank. In investing, reinvesting, exchanging, selling and managing the funds of the Trust, the Trustee shall discharge his or her duties with respect to the funds of the Trust solely in the interest of the Trust and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantors, or any other owner or operator of the Facility, or any of their affiliates as defined in the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a) shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(b) The Trustee is authorized to invest the funds of the Trust in time or demand deposits of the Trustee to the extent insured by an agency of the Federal or State government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. *Commingling and Investment.* The Trustee may, upon direction by the Trust Administrator:

(a) transfer from time to time any or all of the assets of the Trust to any common, commingled or collective trust fund created by the Trustee in which the Trust is eligible to participate, subject to all the provisions thereof, to be commingled with the assets of other trust participating therein; and

(b) purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 7. *Express Powers of Trustee.* Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held by the Trust in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combined certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Trust;

(d) To deposit any cash held by the Trust in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To accept additions to the Trust from sources other than the Grantors; and

(f) With the consent of the Governance Committee previously obtained, to contest, compromise, or otherwise settle any claim in favor of the Trust or Trustee, or in favor of third persons and against the Trust or Trustee.

Section 8. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect to the funds of the Trust and all brokerage commissions incurred by the Trust shall be paid from the Trust. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantors, and all other proper charges and disbursements of the Trustee shall also be paid from the Trust.

Section 9. *Annual Valuation.* The Trustee shall, based on the calendar year, within 45 days of the last day of the calendar year, furnish to the Governance Committee to the Trust Administrator and to the Commission, a statement confirming the value of the Trust. Any securities in the Trust shall be valued at market value as of no more than 30 days after the last day of the Grantors' fiscal year. The failure of any member of the Governance Committee to object in writing to the Trustee within 90 days after the statement has been furnished to the Governance Committee and to the Commission shall constitute a conclusively binding assent by the Governance Committee, barring the Governance Committee from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 10. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to Grantors, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel. The Trustee may execute any of its powers and perform any of its duties hereunder directly or through agents or attorneys, so long as the delegation process does not delay Trustee's performance of its obligations pursuant to this Agreement.

Section 11. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services. Annual fees are \$_____ without pro-ratio for partial years. Annual fees are to be paid by the Trust.

Section 12. *Successor Trustee.* The Trustee may resign or the Governance Committee may replace the Trustee, but such resignation or replacement shall not be effective until the Governance Committee has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Trust. If for any reason the Governance Committee cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to the Commission for the appointment of a successor trustee or for instruction. The successor trustee shall specify the date on which is assumes administration of the trust in a writing sent to the Governance Committee,

the Commission, and the present Trustee by certified mail, return receipt request, 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 13. *Instructions to the Trustee.* All orders, requests and instructions by the Governance Committee to the Trustee shall be in writing, signed by a designee of the Governance Committee and confirmed in writing by the Trust Administrator. The Trustee shall be fully protected in acting without inquiry, in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Governance Committee or Trust Administrator hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Governance Committee or the Trust Administrator.

Section 14. *Amendment of Agreement.* Upon prior approval of the Commission, this Agreement may be amended by an instrument in writing executed by the Grantors and the Trustee, or executed solely by the Trustee if the Grantors cease to exist.

Section 15. *Irrevocability and Termination.* Subject to the rights of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable regardless of when the first deposit, if any, is made into the Trust and shall continue until, upon prior approval of the Commission, it is terminated by an instrument in writing executed by the Grantors and the Trustee, or executed solely by the Trustee if the Grantors cease to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantors.

Section 16. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in the carrying out of any directions by the Governance Committee and confirmed by the Trust Administrator in accordance with this Agreement. The Trustee and its directors, officers, agents and employees shall be indemnified and saved harmless by the Grantors of from the Trust, or both, from and against any personal liability to which the Trustee may be subjected to be reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event Governance Committee fails to provide such defense. The Trustee shall not be liable for any action taken or omitted by it in good faith except to the extent that a final adjudication of a court of competent jurisdiction determines that the Trustee's negligence or willful misconduct was the primary cause of any loss to either of the Parties. In the event that the Trustee shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which, in its opinion, conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto or by a final order or judgment of a court of competent jurisdiction, except that in the case of an expiring security the Trustee shall be obligated to draw down the value of the security. The Trustee may interplead all of the assets held hereunder into a court of competent jurisdiction or may seek a declaratory judgment with respect to certain circumstances, and thereafter be fully relieved from any and all liability or

obligation with respect to such interpleaded assets or any action or non-action based on such declaratory judgment. Anything in this agreement to the contrary notwithstanding, in no event shall the Trustee be liable for special, indirect or consequential damage of any kind whatsoever (including, but not limited to, lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Governance Committee hereby grants the Trustee a lien, a right of set off and security interest to the account for the payment of any claim for compensation, expenses and amounts due hereunder. The parties hereto acknowledge that the foregoing indemnities shall survive the resignation or the removal of the Trustee or the termination of this agreement.

Section 17. *Choice of Law.* This Agreement shall be administered, construed and enforced according to the laws of the State of New York.

Section 18. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or legal efficacy of this Agreement.

Section 19. *Successor.* Any corporation into which the Trustee in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee in its individual capacity may be transferred, shall be the Trustee under this Agreement without further act.

Section 20. *Force Majeure.* In the event that any party or the Trustee is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, the Trustee shall not be liable for damages to the other parties for any damages resulting from such failure to perform otherwise from such causes. Performance under this Agreement shall resume when the Trustee is able to perform substantially.

Section 21. *Tax Matters.* Upon execution of this Agreement, Grantors shall provide the Trustee with a fully executed W-8 or W-9 Internal Revenue Service form, which shall include its Tax Identification Number (TIN) as assigned by the Internal Revenue Service. All interest or other income earned under the Agreement shall be allocated and paid as provided herein and reported by the recipient to the Internal Revenue Service as having been so allocated and paid.

Section 22. *Compliance with Court Orders.* In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Trustee is hereby expressly authorized, in its sole discretion and so long as it give notice of such writ, order, or decree to the Governance Committee and the Trust Administrator (in advance and in writing, if possible), to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing by written opinion of counsel is binding upon it and

institutions to obtain, verify and record information that identifies each person who opens an account. When an account is opened, the Escrow Agent will ask for information that will allow it to identify relevant parties.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written.

GRANTORS

TRUSTEE

TRUST ADMINISTRATOR
