

[Insert Date]

[Name]

[Title]

[Company Name]

[Address 1]

[Address 2]

[City, State Zip Code]

Subject: [TBD]

Dear [Name]:

The Long Island Power Authority hereby confirms that it retained [Company Name] (hereafter referred to as the “Consultant”), to provide [TBD] services to the Authority, and its wholly-owned subsidiary, the Long Island Lighting Company d/b/a LIPA (collectively referred to herein as the “Authority”), as described herein.

Unless modified as provided herein, this contract shall begin on [date] and end on [date], subject to the provisions of Schedule A, Article III of this agreement.

The Consultant's engagement shall be subject to the provisions set forth in the Schedules annexed hereto entitled:

- “SCHEDULE A - GENERAL CONDITIONS APPLICABLE TO AUTHORITY CONSULTANT AGREEMENTS.”
- “SCHEDULE B – SCOPE OF SERVICES.”
- “SCHEDULE C - INDIVIDUALS AVAILABLE FOR RENDERING CONSULTING SERVICES UNDER THIS CONTRACT.”
- “SCHEDULE D - FEES FOR SERVICES.”
- APPENDIX A – STANDARD CLAUSES FOR LIPA CONTRACTS
- APPENDIX B - PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

The services shall include those defined in Schedule B and such other matters as may be requested

from time-to-time by authorized representatives of the Authority, which include the President and Chief Executive Officer, the General Counsel and Secretary, and the Senior Vice President and Chief Financial Officer *[list all others that may apply]*. The _____ will serve as the Authority's primary authorized representative, as set forth in Schedule A, Article I, Section 1.5 below. *(designate here, or follow section 1.5)*.

Original billings should be submitted directly to the Authority's *[TBD]*, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553.

If the foregoing is acceptable to you, please so indicate by signing all three originals of this Agreement in the space provided below.

Sincerely,

[Procurement Officer]
[Title]

Enclosure

ACCEPTED BY:
[Company Name]

[Name and Title]

STATE OF _____)
COUNTY OF _____) ss.:

On the _____ day of _____, 200_, before me personally came _____, to me known to be the individual described in the foregoing Agreement as [Title] of [Company Name], who being sworn did acknowledge that he/she executed same on behalf of [Company Name] and that he/she was authorized to execute same on behalf of [Company Name].

Notary Public

APPROVED BY:
Office of the State Comptroller

Name

Title

Date

APPROVED AS TO FORM:
Office of the New York State Attorney General

Name:

Title

Date

SCHEDULE A

GENERAL CONDITIONS APPLICABLE TO AUTHORITY CONSULTANT AGREEMENTS

ARTICLE I

RELATION OF CONSULTANT TO THE AUTHORITY

1.1 SUPERVISION BY THE AUTHORITY. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of the Authority provided that neither the Authority's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 CONSULTANT'S PERSONNEL. The Consultant shall designate in writing to the Authority one individual, satisfactory to the Authority, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be the Authority's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon the Authority's written request. The designee shall not be replaced by the Consultant without the Authority's prior written consent.

1.3 APPROVAL OF SUBCONSULTANTS. Except as provided for herein, the Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of the Authority. The Consultant shall inform the Authority in writing of the name, service to be rendered, and compensation of the Subconsultant, and of any interest it may have in the Subconsultant. Nothing in this clause shall prohibit or be construed to hinder, prevent or affect creditors, made pursuant to the statutes of the State of New York. The Consultant may assign its right to receive payment without the Authority's prior written consent.

1.4 CONSULTANT AS INDEPENDENT CONTRACTOR. Notwithstanding any other provisions of this Agreement, the Consultant's status (and that of any Subconsultant) shall be that of an independent contractor and not that of an agent or employee of the Authority. Accordingly, neither the Consultant nor any Subconsultant shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Authority.

1.5 THE AUTHORITY'S REPRESENTATIVE. To the extent not otherwise designated herein, the Authority will designate in writing to the Consultant an individual who will serve as the Authority's Representative and normal point of contact for the Consultant in regard to this Agreement and the Consultant's services and obligations hereunder. The Authority may from time to time change this designation by written notification to the Consultant.

1.6 APPROVALS OR ACCEPTANCE BY THE AUTHORITY. Whenever action is to be taken, or approval or acceptance given, by the Authority, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Authority's Representative, by the official of the Authority who signed this Agreement on behalf of the Authority, or by another officer or employee of the Authority duly designated by such signing officer to represent the Authority in connection therewith. The Authority shall notify the Consultant of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Authority's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Consultant hereunder shall in no way relieve the Consultant of responsibility for such materials.

1.7 CONFLICT-OF-INTEREST.

(a) Members of the engagement team of the Consultant who have access to confidential information have not now acquired, and will not acquire, any interest, direct or indirect, present or prospective, in any facilities or utility systems to which the Consultant's work may relate or any real estate which may be the subject of the services provided under this Agreement or in the immediate vicinity thereof, and has not employed, and will not knowingly employ, in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent, or Trustee of the Authority shall be admitted to any share or part hereof or to any benefit to arise herefrom.

(c) No officer, employee, agent, or Trustee of the Authority shall participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested; nor shall any officer, agent, Trustee, or employee of the Authority have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) For the term of the Agreement, Consultant's representation of, services for and involvement with clients other than the Authority does not involve any conflict of interest with the Authority. The Consultant shall not perform any new services for an existing client or engage a new client that would involve a potential conflict of interest with the Authority without receiving from the Authority a prior express written waiver of the conflict.

(e) The Consultant shall cause, for the benefit of the Authority, every contract or agreement with any Subconsultant to include the representations contained in subsections (a), (b), (c) and (d) of this Section 1.7, as well as the representation that the Subconsultant does not now have any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof, and has not employed, and will not knowingly employ, in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement. The Consultant will take such action in enforcing such provisions as the Authority may direct, or, at its opinion, assign such rights as it may have to the Authority for enforcement by the Authority.

1.8 NOTICE OF DELAYS. The Consultant shall promptly give written notice to the Authority Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

ARTICLE II

DOCUMENTS AND RECORDS

2.1 OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS. With the exception of software employed by Consultant, which is subject to licensing restrictions of the owner of such software (other than Consultant), all work product prepared by Consultant (or any Subconsultant) on behalf of the Authority, including but not limited to originals and negatives of all plans, drawings, reports, charts, programs, models, specimens, specifications, work papers, photographs and other documents or materials including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Authority. To the extent ownership in any work product does not automatically vest in the Authority, then the Consultant shall transfer and assign and shall use cause any subcontractor to transfer and assign, and Consultant does hereby assign all right, title and interest, (including all Intellectual Property rights) in and to such work product to the Authority. The Consultant shall, and shall cause and subcontractor to execute all documents and take all actions requested by the Authority to transfer and otherwise assist the Authority to register and otherwise maintain and protect the Authority's Intellectual Property rights in and to such work product anywhere in the world. The Authority shall have the right to publish, transfer, sell, license and use all or any part of the work product without payment of any additional royalty, charge, or other compensation to the Consultant. Upon request of the Authority during any stage of the work, Consultant shall deliver all such materials to the Authority. Notwithstanding the provisions of this Article II, the Authority and Consultant acknowledge that Consultant may, from time to time, receive materials from third parties under confidentiality agreements entered into for purposes of performance of services under this Agreement which may restrict the distribution of such materials to representatives of the Authority. Such confidentiality agreements shall be honored by the Authority and Consultant.

The Consultant agrees that it shall not publish, transfer, sell, license, or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of the work product prepared on behalf of the Authority, including such reports and other documents which are not otherwise available in the public domain, including work papers, without the prior written approval of the Authority, except that the Consultant may retain copies of such reports and other documents for Consultant's general reference during the engagement period.

2.2 CONFIDENTIAL / TRADE SECRET MATERIALS. Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission. If Consultant intends to seek an exemption from disclosure of these materials under Freedom of Information Law, Consultant must request the exemption in writing, setting forth the reasons for the claimed exemption, at the time of submission or as required to address requests for materials under Freedom of Information Law. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination shall be made in accordance with statutory procedures. *Nothing in this Agreement is intended or shall be construed to waive any Party's right to claim that a communication or document is covered by a legally recognized privilege, including but not limited to the attorney client privilege.*

2.3 MAINTENANCE OF RECORDS. The Consultant shall, until seven (7) years after completion of its services hereunder or termination of this Agreement by the Authority, establish and maintain and shall require each Subconsultant to establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively, "the Records") including, but not limited to: (a) complete and correct Records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement, and (b) complete and correct Records relating to all out-of-pocket expenses incurred

under this agreement, including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultant) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder. Consultant shall make all such Records available to the Authority or its authorized representatives for review and audit at all such reasonable times as the Authority shall from time to time request. Consultant shall submit substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with Article V of this Agreement.

ARTICLE III

TERMINATION

3.1 **DEFAULT BY CONSULTANT.** If any material representation made by the Consultant in this Agreement shall prove to be false or misleading in any material respect, or if the Consultant shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of three (3) days after written notice from the Authority specifying the occurrence, omission, or failure giving rise to such default, or if, in the opinion of the Authority, by reason of the nature of such default, such default cannot be cured within such three (3) day period, then if the Consultant shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, the Authority, in addition to any other remedies of claims it may have with respect to such representation or such default, may terminate this Agreement immediately upon oral or written notice to the Consultant. In the event of such termination, the Authority, without waiving any such remedy or claims, will pay the Consultant for services satisfactorily performed prior to the effective date of cancellation. Any reports, drawings, or other documents prepared for the Authority prior to the effective date of such cancellation shall be delivered to the Authority by the Consultant in accordance with Article II of this Agreement.

3.2 **OPTIONAL TERMINATION BY THE AUTHORITY.** The Authority at any time, in its sole discretion, may terminate this Agreement, or postpone or delay all or any part of the Agreement, upon written notice to the Consultant. In the event of such termination, postponement, or delay, the Authority shall pay the Consultant for professional time and out-of-pocket expenses incurred by the Consultant to the date notice of such action is received by the Consultant. Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provisions of this Section 3.2.

The Authority also reserves the right to terminate this contract in the event it is found that the certification filed by Consultant in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Authority may exercise its termination right by providing written notification to the Consultant in accordance with this Section 3.2.

ARTICLE IV

OTHER CONTRACT PROVISIONS

4.1 **NO WAIVER.** No failure by the Authority to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall

constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered, or modified except by a written instrument executed by the Authority. No waiver of any breach shall affect or alter this Agreement but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

4.2 WARRANTY. Consultant represents that it is fully experienced, properly qualified, equipped, and organized to perform the services stipulated under this Agreement. Consultant warrants that it will perform the services under this agreement with the degree of professional skill, sound practices and judgment that are exercised with respect to the required services. Pursuant to this end, Consultant agrees to perform the services using its expertise and warrants that such work shall be accurate, shall be free from errors or omissions, and shall conform in all respects with the requirements set forth in this Agreement. If it is determined by the Authority that the Consultant's services fail to conform to these warranties or the requirements of this Agreement, Consultant agrees that it will at its own expense correct any deficiencies that result from Consultant's failure to perform in accordance with the foregoing standards and this Agreement. Notification of Consultant by the Authority for the identified deficiencies shall be provided in writing within twelve (12) months of completion of the engagement covered by this Agreement.

4.3 ASSIGNMENT BY THE AUTHORITY. The Authority may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Consultant's performance of any portion of the services provided for herein, together with the Authority's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency, or department or other entity which the Authority determines has undertaken or will undertake any part of the Agreement. The Authority shall give the Consultant written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Authority of all further liability or obligations hereunder.

4.4 CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports, and other materials developed or shared by the Authority in the course of this agreement are strictly confidential between Consultant and the Authority and Consultant may not at any time reveal or disclose such data, recommendations, or reports in whole or in part to any third party without first obtaining permission from the Authority. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as the Authority may designate by written request. Such cooperation shall include making available to such parties, data, information, and reports used or developed by Consultant in connection with this agreement.

4.5 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by the Authority, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations, and filings required to be obtained by the Authority or the Consultant in connection with this Agreement.

4.6 INDEMNIFICATION. In addition to any liability or obligation of the Consultant to the Authority that may exist under this Agreement, or by statute or otherwise, Consultant shall indemnify, defend and hold the Authority, and its agents, trustees, directors, officers, employees, affiliates, subcontractors, successors and assigns harmless from and against any and all losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses of whatever form or nature, including, without limitation, attorneys' fees and other costs of legal defense and of investigating any proceeding commenced or threatened, whether direct or indirect, as a result of, arising out of, or relating to the negligent acts, errors, or omissions, whether

active or passive, by the Consultant, its directors, officers, agents, or employees in performing the services under this Agreement for which Consultant is determined to be legally liable.

The Consultant agrees that this Section 4.6 shall survive the expiration or earlier termination of this Agreement, and that Consultant's obligations under this Section 4.6 shall not be limited by any specifications herein of required insurance coverage.

4.6.1 The Authority shall indemnify, and hold Consultant, and its agents, directors, officers, and employees harmless from and against any and all losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses, including, but not limited to, reasonable attorney's fees resulting from the negligent acts, errors, or omissions by the Authority, its trustees, directors, officers, agents or employees for which the Authority is determined to be legally liable. Losses, claims, demands, suits, actions, proceedings, costs, damages, judgments, liens, interest, penalties or expenses of whatever form or nature resulting from the negligent acts, errors, or omissions, whether active or passive, by Consultant, its directors, officers, agents, employees, or by others are excluded from the Authority's obligation pursuant to this paragraph.

4.6.2 Nothing in this Agreement shall be construed to create a duty to any standard of care with reference to, or any liability to, any person not a party to, this Agreement.

4.6.3 Neither the Authority nor Consultant shall be liable for incidental or consequential damages.

4.7 RELEASE AND DISCHARGE. Simultaneously with request for final payment hereunder, Consultant shall execute and deliver to the Authority an instrument releasing the Authority of and from any and all claims, demands, and liabilities whatsoever of every name and nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement; provided that such instrument shall not release the Authority from its obligations to indemnify Consultant pursuant to Sections 4.6.

4.8 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

ARTICLE V

BILLING POLICY

5.1 REIMBURSEMENT. The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

[TBD]
Long Island Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553

5.2 INVOICES. Invoices should be submitted no more than monthly, and must be made on the Consultant's own invoice forms or letterhead. All invoices must include the Authority's contract and project numbers, if any. Consultant should also include its federal identification number with the

first invoice. Payment for invoices submitted by the Contractor or Consultant shall only be rendered electronically via CTX unless payment by paper check is expressly authorized by the Authority. Such electronic payment shall be made in accordance with ordinary Authority procedures and practices. Contractor/consultant acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the Authority's electronic payment policy, except where the Authority has expressly authorized payment by check.

5.3 OVERTIME. The Authority expects that all work on its behalf will be performed during the normal working day. Overtime (including secretarial overtime) will not be paid unless warranted by extraordinary circumstance evidenced by the Authority's prior written approval.

5.4 TRAVEL TIME. Out-of-town travel may be required to perform work in accordance with this Agreement. When such travel time does occur on the Authority's behalf, the Authority will compensate for time in transit, when and only to the extent that work is done for the Authority during such time in transit. Consultant must demonstrate to the Authority's satisfaction, any such claim for reimbursement. Time away from home or the office which is not spent performing consulting services for the Authority will not be compensated.

5.5 TRAVEL, FOOD, LODGING. All reasonable travel, food, and lodging expenses associated with the provision of service hereunder, excluding automobile mileage, shall be billed at cost and evidenced by a receipt. Lodging and meals shall be reimbursed in accordance with regulations established by the U.S. General Services Administration and shall not exceed applicable per diems set by the GSA for Nassau County, New York. LIPA does not reimburse for alcoholic beverages. Automobile mileage shall be billed in accordance with current rates as stipulated in the U.S. Federal Acquisition Regulations.

5.6 PRINTING, XEROXING, ETC. (a) Internal printing or xeroxing resulting from the Authority activities shall be charged at \$0.10 per copy, except for routine photocopying for news releases, media alerts and copy drafts which are included in the retainer.

(b) Outside printing shall be reimbursed at cost.

5.7 TELEPHONE, TELEFAX, ETC. Local telephone calls and faxes are included in the retainer. All other calls and telefaxes made on behalf of the Authority are reimbursable, and only at cost as evidenced by a receipt.

5.8 POSTAGE, EXPEDITED MAIL, ETC. Only postage (including charges for expedited service and courier services) to the Authority or made on behalf of the Authority is reimbursable, and only at cost as evidenced by a receipt.

5.9 EQUIPMENT, SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Consultant must supply the following detailed documentation:

(a) Receipts of supplier's invoices for costs of commodities, equipment and supplies, insurance and other items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment paid for by the Authority pursuant to this Agreement is vested in the Authority. The Authority has the option of claiming any or all of such equipment.

5.10 OTHER MISCELLANEOUS EXPENSES. All other expenses not specifically mentioned herein are not reimbursable and should be considered part of Consultant's overhead cost.

5.11 NON-REIMBURSABLES.

- (a) Flight insurance.
- (b) Valet Services (except five or more consecutive days).
- (c) Personal expenses of any type.
- (d) Expenses paid for the Authority employees.
- (e) Travel to any Authority office to "deliver vouchers or pick up check."
- (f) Alcoholic beverages.

5.12 GENERAL.

- (a) All receipts must be legible. Illegible receipts will not be reimbursed.
- (b) Whenever possible original receipts should be presented for reimbursement.

(c) The Authority is a corporate municipal instrumentality and as such is exempt from all sales and usage taxes within New York State. A copy of the Authority's certificate of tax exemption may be obtained by writing to the Authority.

(d) All requests for meal reimbursement must be limited to Consultant's employees and fully supported by a restaurant receipt along with a full explanation of the business purpose, identifying all attendees (name, title, and affiliation).

At any time or times until six years after completion of Consultant's services or earlier termination of this Agreement by the Authority, the Authority may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Authority on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments, or increased for underpayments, as the case may be.

ARTICLE VI

INSURANCE

6.1 CONSULTANT'S INSURANCE. Consultant shall maintain in effect at its own expense employer's liability insurance as follows: one million dollars (\$1,000,000) of comprehensive general liability insurance (bodily injury and property damage), five-hundred thousand dollars (\$500,000) of comprehensive automobile liability insurance (bodily injury and property damage) with respect to Consultant's employees and vehicles assigned to the prosecution of work under this Agreement. If Consultant does not maintain comprehensive automobile liability insurance on behalf of its employees, Consultant may provide the Authority with proof that Consultant's employees who are assigned to the prosecution of work under this Agreement maintain such comprehensive automobile liability insurance individually. Consultant shall also maintain at its own expense one million dollars (\$1,000,000) of professional liability insurance.

6.1.1 Consultant shall obtain and thereafter maintain in effect, if available, such additional insurance as may be requested in writing by the Authority, the cost of which will be reimbursed by the Authority.

To the Authority:

[TBD]

Long Island Power Authority
333 Earle Ovington Blvd., Suite 403
Uniondale, New York 11553

(b) All notices shall be deemed effective upon receipt by the party to whom such notice is given.

SCHEDULE B

SCOPE OF SERVICES

The Consultant shall perform advisory services, as follows:

SCHEDULE C

INDIVIDUALS AVAILABLE FOR RENDERING CONSULTING SERVICES

The following individuals may provide consulting services under this Agreement. When necessary, Consultant may utilize other personnel although this Schedule C sets forth those persons primarily responsible, in accordance with Article I of Schedule A of this Agreement.

Individuals

Position Title

1.

SCHEDULE D

FEES FOR SERVICES

The Authority shall compensate the Consultant for work performed in accordance with the Scope of Services described in Schedule B of this Agreement as follows: