

September 13, 2018

Via Electronic Filing

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: American Transmission Systems, Inc. – Filing of Engineering and
Construction Services Agreements in Docket No. ER18-2420-000**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹ and Part 35 of the Federal Energy Regulatory Commission’s (“Commission’s”) Rules of Practice and Procedure,² American Transmission Systems, Inc. (“ATSI”) (the “Applicant”), a transmission owning member of the PJM Interconnection, L.L.C. (“PJM”), hereby submits for filing four Engineering and Construction Services Agreements (together, the “Service Agreements”) described in more detail herein.³

I. Description of the Applicant and Background

ATSI is a transmission-only public utility, which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania. The Applicant’s transmission facilities are subject to the functional control of PJM, which provides transmission service to customers pursuant to the PJM Open Access Transmission Tariff (“PJM Tariff”).

¹ 16 U.S.C. § 824d.

² 18 C.F.R. Part 35.

³ Pursuant to Order No. 714, this filing is submitted by PJM on behalf of the Applicant as part of an XML filing package that conforms to the Commission’s regulations. PJM has agreed to make all filings on behalf of the PJM Transmission Owners in order to retain administrative control over the PJM Tariff. Thus, the Applicant requested that PJM submit the Service Agreements in the eTariff system as part of PJM’s electronic Service Agreement Tariff.

II. Description of the Service Agreements

The Service Agreements are described below. None of the projects has entered into service, and no payments have been made, pursuant to the Service Agreements.

Service Agreement No. 4982

Service Agreement No. 4982 (“SA No. 4982”) is an Engineering and Construction Services Agreement for the “Energizing the Future” transmission initiative by and between ATSI and The Cleveland Electric Illuminating Company (“CEI”) and is dated March 23, 2018. Under SA No. 4982, ATSI and CEI will be performing work on the ATSI transmission system, which work involves the installation of one new 138 kV circuit breaker, relays and associated equipment at the Emily Substation. The parties anticipate an in-service date for these facilities of December 21, 2018.

Service Agreement No. 4995

Service Agreement No. 4995 (“SA No. 4995”) is an Engineering and Construction Services Agreement for the “Energizing the Future” transmission initiative by and between ATSI and The Toledo Edison Company (“TE”) and is dated March 23, 2018. Under SA No. 4995, ATSI and TE will be performing work on the ATSI transmission system, which work involves the replacement of circuit switchers and associated equipment at the Woodville Substation. The parties anticipate an in-service date for these facilities of December 31, 2018.

Service Agreement No. 4997

Service Agreement No. 4997 (“SA No. 4997”) is an Engineering and Construction Services Agreement for the “Energizing the Future” transmission initiative by and between ATSI and TE and is dated March 23, 2018. Under SA No. 4997, ATSI and TE will be performing work on the ATSI transmission system, which work involves the replacement of one 69 kV capacitor bank, circuit switcher and associated equipment at the Ford Road Substation. The parties anticipate an in-service date for these facilities of December 31, 2018.

Service Agreement No. 4999

Service Agreement No. 4999 (“SA No. 4999”) is an Engineering and Construction Services Agreement for the “Energizing the Future” transmission initiative by and between ATSI and CEI and is dated March 23, 2018. Under SA No. 4999, ATSI and CEI will be performing work on the ATSI transmission system, which work involves the installation of new relays and associated equipment at the Horizon Substation. The parties anticipate an in-service date for these facilities of December 31, 2018.

III. Request for Effective Date

As indicated above, the projects under the Service Agreements have not entered into service and will not be entering into service until at least sixty (60) days from the date of the instant filing. Additionally, no payments have been made pursuant to the Service Agreements. As such, the Applicant respectfully requests that the Commission grant an effective date for the Service Agreements of November 13, 2018, which is more than sixty (60) days after the date of this filing.

IV. Communications

Please direct any communications regarding this filing to the following individuals:

P. Nikhil Rao
Attorney
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308
Phone: (330) 384-2422
pnrao@firstenergycorp.com
Counsel for Applicant

Nicholas A. Giannasca
Davis Wright Tremaine LLP
21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104
Phone: (212) 603-6406
NicholasGiannasca@dwt.com
Counsel for Applicant

V. Documents Submitted With This Filing

In accordance with the Commission's eTariff regulations, PJM, on behalf of the Applicant, is submitting an eTariff XML filing package containing the following materials:

- this transmittal letter;
- each Service Agreement in eTariff format;
- a clean copy of each Service Agreement in PDF format for publishing in eLibrary; and
- a PDF document with the signatures pages of the parties to each Service Agreement for publishing in eLibrary.

VI. Service

The Applicant has served copies of this filing upon all other parties to the Service Agreements.

VII. Conclusion

The Applicant hereby respectfully requests that the Commission accept for filing each Service Agreement with an effective date of November 13, 2018. The Applicant further requests any waivers of the Commission's regulations necessary to give effect to such agreements as requested by the Applicant. Please direct any questions regarding the instant filing to the undersigned.

Respectfully submitted,

/s/ Nicholas A. Giannasca

Nicholas A. Giannasca
Davis Wright Tremaine LLP
21st Floor
1251 Avenue of the Americas
New York, NY 10020-1104
Phone: (212) 603-6406
NicholasGiannasca@dwt.com
Counsel for Applicant

Engineering and Construction Services Agreement
between
American Transmission Systems Inc.
and
The Cleveland Electric Illuminating Company
for the
Emily Breaker Replacement

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective March 23, 2018 is entered into by and between American Transmission Systems Inc. (“ATSI”), and The Cleveland Electric Illuminating Company (“CEI”) (ATSI and CEI, each a “Party” and collectively the “Parties”).

WHEREAS, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each party;

WHEREAS, ATSI is engaged in the transmission of electric energy, and CEI is engaged in the distribution of electric energy;

WHEREAS, ATSI and CEI are members of PJM;

WHEREAS, CEI is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on November 5, 2015 and accepted for filing by the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER16-271-000 (“Interconnection Agreement”);

WHEREAS, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain CEI facilities (the “Project”); and

WHEREAS, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions. The following definitions shall apply:

- a.** “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b.** “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c.** “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d.** “Equipment and Materials” means all materials and components necessary to construct ATSI and CEI interconnection facilities necessary to complete the Project.
- e.** “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- f.** “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g.** “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
 - h.** “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, CEI, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
 - i.** “CEI” means The Cleveland Electric Illuminating Company.
 - j.** “CEI Project Facilities” means the CEI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
 - k.** “ATSI” means American Transmission Systems Inc.
 - l.** “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
 - m.** “Project Facilities” means either the “ATSI Project Facilities” or the “CEI Project Facilities,” or both, as the context warrants.
 - n.** “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
 - o.** “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
- 2. Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
- 3. Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by CEI and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by CEI shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design

criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.
5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the CEI Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
 - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
 - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
 - a. ATSI's responsibility to reimburse CEI for the E & C Services to be performed by CEI and/or its Contractor(s) shall include, but not be limited to, the following related to the work described in Schedule 2:
 - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating,

- and rearranging CEI property or other property or facilities;
- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
 - iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for CEI and/or Contractor employees performing E & C Services;
 - iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for CEI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
 - v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
 - vi. Tax Gross-Up.
 - 1. CEI will treat payments made by ATSI to CEI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. ATSI will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. ATSI may, at its own expense, or CEI shall, upon the timely written request by ATSI and at ATSI's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If ATSI requests CEI to obtain such final determination, ATSI shall advance to CEI on a periodic basis as requested by CEI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by ATSI to CEI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, CEI shall refund to ATSI any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, CEI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
 - 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) ATSI's agreement to make any tax gross-up under this Article 8(a) (vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

9. Invoices and Payment.

- a.** Upon execution of this Agreement by the Parties, ATSI shall furnish to CEI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for CEI's completion of the E & C Services relating to the work set forth in Schedule 2.
- b.** Within one hundred and twenty (120) days after CEI's completion of the E & C Services as set forth in Schedule 2, CEI shall furnish to ATSI a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by CEI in connection with the E & C Services relating to the work set forth in Schedule 2, including the installation, testing and commissioning related to the CEI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.

 - i.** In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, CEI will issue to ATSI a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. ATSI shall furnish to CEI a payment for such difference within 30 days after ATSI's receipt of the Final Reconciliation Invoice.
 - ii.** In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, CEI shall furnish to ATSI a refund payment in the amount of such difference within 30 days after ATSI's receipt of the Final Reconciliation Statement.
- c.** In connection with the reconciliation, ATSI shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable ATSI to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect ATSI's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d.** In the event that ATSI disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

- 10. Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other Party's Project Facilities.

11. Other Considerations.

- a.** All transmission outages in connection with the provision of E & C Services will or have already been scheduled by CEI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b.** The cancellation or change of any transmission outage(s) scheduled by CEI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c.** All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and CEI and/or FirstEnergy standards and specifications.
- d.** In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The CEI Project Facilities constructed under the terms of this Agreement shall be the sole property of CEI, and CEI shall be solely responsible for their operation, repair and maintenance.
- e.** Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.

- 12. Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. Written Notice. All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

| | | | |
|---------------------|--|-------------------------|--|
| a. For ATSI: | | With a copy to : | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

| | | | |
|--------------------|--|------------------------|--|
| b. For CEI: | | With a copy to: | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

14. Assignment. Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party’s transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party’s duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver.** A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue.** This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings.** The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival.** All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure.** The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
 - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse ATSI from its obligations to pay CEI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
 - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the Radial Modifications, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental.** In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
 - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
 - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by CEI or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on CEI property, or on property occupied by CEI pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), CEI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. CEI shall be responsible for satisfying reporting requirements required by Law.

21. Limitations of Liability. The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

22. Indemnification.

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified

Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

23. Insurance.

- a.** Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
- i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
 - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
 - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
 - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii) (Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a

combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
 - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
 - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
 - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
 - d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
 - e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
 - f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed under this Agreement.

24. Breach.

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

25. Termination.

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

26. Dispute Resolution.

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be selected by the American Arbitration Association ("AAA") at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party's right to effect remedies or limit such Party's rights under this Agreement or otherwise.

27. Audit of Records.

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
 - i. Each Party, including its agents or employees, shall have access to the other Party's books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
 - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
 - iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

28. **Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
29. **Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

[Signatures on the next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4982

AMERICAN TRANSMISSION SYSTEMS INC.

By: /s/ Richard A. Ziegler
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: /s/ Thomas R. Pryatel
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services

Schedule 1

Scope of Work for ATSI

- **Emily:** Install and own new 138 kV circuit breaker, relays and associated equipment

Schedule 2

Scope of Work for CEI

- **Emily:** Remove and retire existing 138 kV circuit breaker, relays and associated equipment

Schedule 3

Schedule of Work

ATSI and CEI will work collaboratively to develop timely schedules and milestone dates for the work to be completed on the projects to complete the Scope of Work described in Schedules 1 and 2 on or about:

- **Emily:** December, 2018

Schedule 4

Preliminary Outage Schedule

- **Emily:** November, 2018

Schedule 5

Payment Schedule

Actual costs incurred by CEI estimated as defined below and will be charged to ATSI after the project is placed into service.

- **Emily:** \$10,000

Schedule 6

SCOPE OF WORK AMENDMENT OR MODIFICATION FORM

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of _____, is by and between American Transmission System Inc. (“ATSI”) and The Cleveland Electric Illuminating Company (“CEI”). ATSI and CEI may each be referred to herein individually as a “Party,” and together as the “Parties.”

WITNESSETH

WHEREAS, ATSI and CEI are parties to an Engineering and Construction Services Agreement dated []; and

WHEREAS, the Engineering and Construction Services Agreement between ATSI and CEI contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

WHEREAS, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

WHEREAS, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by ATSI:

1.2 Additional Work to be Performed by CEI:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

IN WITNESS WHEREOF, ATSI and CEI have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

AMERICAN TRANSMISSION SYSTEMS INC.

By: _____

Name: _____

Title: _____

THE CLEVELAND ELECTRIC ILLUMINATING
COMPANY

By: _____

Name: _____

Title: _____

Engineering and Construction Services Agreement
between
American Transmission Systems, Incorporated
and
Toledo Edison Company
for the
Woodville Circuit Switcher Replacement Project

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective March 23, 2018 is entered into by and between American Transmission Systems, Incorporated (“ATSI”), and Toledo Edison Company (“TE”) (ATSI and TE, each a “Party” and collectively the “Parties”).

WHEREAS, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each Party;

WHEREAS, ATSI is engaged in the transmission of electric energy, and TE is engaged in the distribution of electric energy;

WHEREAS, ATSI and TE are members of PJM;

WHEREAS, TE is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on February 2, 2018 and is pending acceptance for filing by the Federal Energy Regulatory Commission (“FERC”) (“Interconnection Agreement”);

WHEREAS, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain TE facilities (the “Project”); and

WHEREAS, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions. The following definitions shall apply:

- a.** “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b.** “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c.** “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d.** “Equipment and Materials” means all materials and components necessary to construct ATSI and TE interconnection facilities necessary to complete the Project.
- e.** “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- f.** “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g.** “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
 - h.** “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, OE, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
 - i.** “TE” means The Toledo Edison Company.
 - j.** “TE Project Facilities” means the TE owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
 - k.** “ATSI” means American Transmission Systems, Incorporated.
 - l.** “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
 - m.** “Project Facilities” means either the “ATSI Project Facilities” or the “TE Project Facilities,” or both, as the context warrants.
 - n.** “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
 - o.** “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
- 2. Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
- 3. Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by TE and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by TE shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design

criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.
5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the TE Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
 - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
 - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
 - a. TE's responsibility to reimburse ATSI for the E & C Services to be performed by ATSI and/or its Contractor(s) shall include, but not be limited to, the following related to the Project described in Schedule 1:
 - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating,

- and rearranging ATSI property or other property or facilities;
- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
 - iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for ATSI and/or Contractor employees performing E & C Services;
 - iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for ATSI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
 - v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
 - vi. Tax Gross-Up.
 - 1. ATSI will treat payments made by TE to ATSI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. TE will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. TE may, at its own expense, or ATSI shall, upon the timely written request by TE and at TE's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If TE requests ATSI to obtain such final determination, OE shall advance to ATSI on a periodic basis as requested by ATSI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by TE to ATSI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, ATSI shall refund to TE any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, ATSI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
 - 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) TE's agreement to make any tax gross-up under this Article 8(a)(vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

9. Invoices and Payment.

- a.** Upon execution and FERC filing of this Agreement by the Parties, TE shall furnish to ATSI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for ATSI's completion of the E & C Services relating to the Substation Modifications as set forth in Schedule 1.
- b.** Within one hundred and twenty (120) days after ATSI's completion of the E & C Services as set forth in Schedule 1, ATSI shall furnish to TE a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by OE in connection with the E & C Services relating to the Radial Modifications, as set forth in Schedule 1, including the installation, testing and commissioning related to the ATSI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.

 - i.** In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, ATSI will issue to TE a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. OE shall furnish to ATSI a payment for such difference within 30 days after OE's receipt of the Final Reconciliation Invoice.
 - ii.** In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, ATSI shall furnish to TE a refund payment in the amount of such difference within 30 days after TE's receipt of the Final Reconciliation Statement.
- c.** In connection with the reconciliation, TE shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable TE to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect TE's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d.** In the event that TE disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

- 10. Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other

Party's Project Facilities.

11. Other Considerations.

- a.** All transmission outages in connection with the provision of E & C Services will or have already been scheduled by ATSI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b.** The cancellation or change of any transmission outage(s) scheduled by ATSI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c.** All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and TE and/or FirstEnergy standards and specifications.
- d.** In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The TE Project Facilities constructed under the terms of this Agreement shall be the sole property of TE, and TE shall be solely responsible for their operation, repair and maintenance.
- e.** Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.

- 12. Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. **Written Notice.** All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

| | | | |
|---------------------|---|------------------|--|
| a. For ATSI: | | With a copy to : | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

| | | | |
|-------------------|---|-----------------|--|
| b. For TE: | | With a copy to: | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

14. **Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions

and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver**. A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings**. The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival**. All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure**. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
 - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse TE from its obligations to pay ATSI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
 - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the project, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental**. In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
 - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
 - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by TE or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of

said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on TE property, or on property occupied by TE pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), TE shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. TE shall be responsible for satisfying reporting requirements required by Law.

21. Limitations of Liability. The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

22. Indemnification.

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against

any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

23. Insurance.

- a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
 - i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
 - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
 - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
 - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii)

(Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
 - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
 - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
- c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
- d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
- e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
- f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed

under this Agreement.

24. Breach.

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

25. Termination.

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

26. Dispute Resolution.

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be

selected by the American Arbitration Association (“AAA”) at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party’s right to effect remedies or limit such Party’s rights under this Agreement or otherwise.

27. Audit of Records.

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
 - i. Each Party, including its agents or employees, shall have access to the other Party’s books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
 - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
 - iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

28. **Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
29. **Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

[Signatures on the next page]

Schedule 1

Scope of Work for ATSI

Woodville: Replace and own circuit switchers and associated equipment

Schedule 2

Scope of Work for TE

Woodville: Remove and retire existing circuit switchers and associated equipment

Schedule 3

Schedule of Work

ATSI and TE will work collaboratively to develop timely schedules and milestone dates for the Project to complete the Scope of Work described in Schedules 1 and 2 on or about December, 2018.

Schedule 4

Preliminary Outage Schedule

December, 2018

Schedule 5

Payment Schedule

Actual costs incurred by TE estimated as defined below and will be charged to ATSI after the project is placed into service.

Woodville: \$5,000

IN WITNESS WHEREOF, ATSI and TE have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By: _____

Name: _____

Title: _____

TOLEDO EDISON COMPANY

By: _____

Name: _____

Title: _____

Engineering and Construction Services Agreement
between
American Transmission Systems, Incorporated
and
Toledo Edison Company
for the
Ford Road Capacitor Bank Replacement Project

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective March 23, 2018 is entered into by and between American Transmission Systems, Incorporated (“ATSI”), and Toledo Edison Company (“TE”) (ATSI and TE, each a “Party” and collectively the “Parties”).

WHEREAS, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each Party;

WHEREAS, ATSI is engaged in the transmission of electric energy, and TE is engaged in the distribution of electric energy;

WHEREAS, ATSI and TE are members of PJM;

WHEREAS, TE is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on February 2, 2018 and is pending acceptance for filing by the Federal Energy Regulatory Commission (“FERC”) (“Interconnection Agreement”);

WHEREAS, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain TE facilities (the “Project”); and

WHEREAS, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions. The following definitions shall apply:

- a.** “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b.** “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c.** “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d.** “Equipment and Materials” means all materials and components necessary to construct ATSI and TE interconnection facilities necessary to complete the Project.
- e.** “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- f.** “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g.** “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
 - h.** “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, OE, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
 - i.** “TE” means The Toledo Edison Company.
 - j.** “TE Project Facilities” means the TE owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
 - k.** “ATSI” means American Transmission Systems, Incorporated.
 - l.** “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
 - m.** “Project Facilities” means either the “ATSI Project Facilities” or the “TE Project Facilities,” or both, as the context warrants.
 - n.** “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
 - o.** “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
- 2. Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
- 3. Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by TE and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by TE shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design

criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.
5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the TE Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
 - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
 - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
 - a. TE's responsibility to reimburse ATSI for the E & C Services to be performed by ATSI and/or its Contractor(s) shall include, but not be limited to, the following related to the Project described in Schedule 1:
 - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating,

- and rearranging ATSI property or other property or facilities;
- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
 - iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for ATSI and/or Contractor employees performing E & C Services;
 - iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for ATSI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
 - v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
 - vi. Tax Gross-Up.
 1. ATSI will treat payments made by TE to ATSI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. TE will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. TE may, at its own expense, or ATSI shall, upon the timely written request by TE and at TE's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If TE requests ATSI to obtain such final determination, OE shall advance to ATSI on a periodic basis as requested by ATSI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by TE to ATSI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, ATSI shall refund to TE any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, ATSI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) TE's agreement to make any tax gross-up under this Article 8(a)(vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

9. Invoices and Payment.

- a. Upon execution and FERC filing of this Agreement by the Parties, TE shall furnish to ATSI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for ATSI's completion of the E & C Services relating to the Substation Modifications as set forth in Schedule 1.
- b. Within one hundred and twenty (120) days after ATSI's completion of the E & C Services as set forth in Schedule 1, ATSI shall furnish to TE a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by OE in connection with the E & C Services relating to the Radial Modifications, as set forth in Schedule 1, including the installation, testing and commissioning related to the ATSI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.
 - i. In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, ATSI will issue to TE a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. OE shall furnish to ATSI a payment for such difference within 30 days after OE's receipt of the Final Reconciliation Invoice.
 - ii. In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, ATSI shall furnish to TE a refund payment in the amount of such difference within 30 days after TE's receipt of the Final Reconciliation Statement.
- c. In connection with the reconciliation, TE shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable TE to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect TE's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d. In the event that TE disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

- 10. Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other

Party's Project Facilities.

11. Other Considerations.

- a.** All transmission outages in connection with the provision of E & C Services will or have already been scheduled by ATSI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b.** The cancellation or change of any transmission outage(s) scheduled by ATSI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c.** All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and TE and/or FirstEnergy standards and specifications.
- d.** In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The TE Project Facilities constructed under the terms of this Agreement shall be the sole property of TE, and TE shall be solely responsible for their operation, repair and maintenance.
- e.** Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.

- 12. Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. Written Notice. All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

| | | | |
|---------------------|---|------------------|--|
| a. For ATSI: | | With a copy to : | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

| | | | |
|-------------------|---|-----------------|--|
| b. For TE: | | With a copy to: | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

14. Assignment. Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions

and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver**. A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings**. The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival**. All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure**. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
 - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse TE from its obligations to pay ATSI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
 - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the project, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental**. In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
 - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
 - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by TE or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of

said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on TE property, or on property occupied by TE pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), TE shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. TE shall be responsible for satisfying reporting requirements required by Law.

21. Limitations of Liability. The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

22. Indemnification.

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against

any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

23. Insurance.

- a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
 - i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
 - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
 - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
 - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii)

(Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
 - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
 - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
 - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
 - d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
 - e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
 - f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed

under this Agreement.

24. Breach.

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

25. Termination.

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

26. Dispute Resolution.

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be

selected by the American Arbitration Association (“AAA”) at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party’s right to effect remedies or limit such Party’s rights under this Agreement or otherwise.

27. Audit of Records.

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
 - i. Each Party, including its agents or employees, shall have access to the other Party’s books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
 - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
 - iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

28. **Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
29. **Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

[Signatures on the next page]

Schedule 1

Scope of Work for ATSI

Ford Road: Replace and own 69 kV capacitor bank, circuit switcher, and associated equipment

Schedule 2

Scope of Work for TE

Ford Road: Remove and retire existing 69 kV capacitor bank, circuit switcher, and associated equipment

Schedule 3

Schedule of Work

ATSI and TE will work collaboratively to develop timely schedules and milestone dates for the Project to complete the Scope of Work described in Schedules 1 and 2 on or about December, 2018.

Schedule 4

Preliminary Outage Schedule

December, 2018

Schedule 5

Payment Schedule

Actual costs incurred by TE estimated as defined below and will be charged to ATSI after the project is placed into service.

Ford Road: \$10,000

Schedule 6

SCOPE OF WORK AMENDMENT OR MODIFICATION FORM

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of _____, is by and between Trand-Allegheny Interstate Line Company (“ATSI”) and The Toledo Edison Company (“TE”). ATSI and TE may each be referred to herein individually as a “Party,” and together as the “Parties.”

WITNESSETH

WHEREAS, ATSI and TE are parties to an Engineering and Construction Services Agreement dated []; and

WHEREAS, the Engineering and Construction Services Agreement between ATSI and TE contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

WHEREAS, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

WHEREAS, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by ATSI:

1.2 Additional Work to be Performed by TE:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

IN WITNESS WHEREOF, ATSI and TE have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By: _____

Name: _____

Title: _____

TOLEDO EDISON COMPANY

By: _____

Name: _____

Title: _____

Engineering and Construction Services Agreement
between
American Transmission Systems Inc.
and
The Cleveland Electric Illuminating Company
for the
Horizon PLC Replacement

This Engineering and Construction Services Agreement (the “Agreement”) regarding Engineering and Construction Services (the “E & C Services”), effective March 23, 2018 is entered into by and between American Transmission Systems Inc. (“ATSI”), and The Cleveland Electric Illuminating Company (“CEI”) (ATSI and CEI, each a “Party” and collectively the “Parties”).

WHEREAS, PJM Interconnection, L.L.C. (“PJM”) has functional control of the transmission system (the “Transmission System”) owned by each party;

WHEREAS, ATSI is engaged in the transmission of electric energy, and CEI is engaged in the distribution of electric energy;

WHEREAS, ATSI and CEI are members of PJM;

WHEREAS, CEI is currently interconnected to ATSI at a number of transmission system interconnection points, pursuant to that certain Interconnection Agreement entered into by the Parties on November 5, 2015 and accepted for filing by the Federal Energy Regulatory Commission (“FERC”) in Docket No. ER16-271-000 (“Interconnection Agreement”);

WHEREAS, ATSI is engaged in the “Energizing the Future” transmission initiative, whereby ATSI will be performing work on the ATSI Transmission System, which will require modifications to certain CEI facilities (the “Project”); and

WHEREAS, the Parties wish to definitively agree on the respective rights and obligations of each Party relating to E & C Services related to the Project (defined below) by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions. The following definitions shall apply:

- a.** “Affiliate” means with respect to a corporation, partnership or other entity, each other corporation, partnership, or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.
- b.** “Contractor(s)” means the person(s) or entity(s) designated by a Party to provide or perform all or a portion of the E & C Services, including the supply of any work, services, labor, supervision, equipment, data, materials or any other item.
- c.** “E & C Services” means the work, services, goods, materials, equipment, labor, supervision, oversight, actions, and items performed or provided by each Party in connection with the construction and engineering required to complete the Project as described in this Agreement.
- d.** “Equipment and Materials” means all materials and components necessary to construct ATSI and CEI interconnection facilities necessary to complete the Project.
- e.** “Force Majeure” means any occurrence beyond the reasonable control of a Party which affects or prevents performance of this Agreement, including, but not limited to, fire; flood; drought; earthquake; storm; lightning; explosion; strikes; labor disputes; labor or material shortage; war; terrorism; epidemic; sabotage; acts of public enemy; riot; civil disturbance or disobedience; damage to or failure of major equipment, plants, piping, or appurtenances; unavailability of transportation facilities; emergency or safety related circumstances; acts of God; acts or failure to act by governmental authority; regulatory requirements, regulations, or orders; failure to obtain permits or property rights; acts or omissions of third parties; court orders or other events whether or not the same or similar to the occurrences listed herein. Force Majeure does not include: (i) a failure of performance that is due to an affected Party’s own negligence or intentional wrongdoing; (ii) any removable or remediable causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.
- f.** “Good Utility Practice” means, unless otherwise expressly provided for in this Agreement, those practices, methods and acts with respect to the design, construction, installation, operation, maintenance, repair, replacement, reinforcement, rearrangement, purchase, selection, examination, review, inspection or acceptance of any facility or equipment engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good

Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

- g.** “Hazardous Substances” means any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “radioactive substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by applicable Law.
 - h.** “Law” means all applicable federal, state, county and municipal laws, statutes, ordinances, resolutions, rules and regulations as well as the requirements of all commissions, boards, bodies and agencies having jurisdiction over ATSI, CEI, or the E & C Services or over any persons or entities performing or providing any portion of the E & C Services.
 - i.** “CEI” means The Cleveland Electric Illuminating Company.
 - j.** “CEI Project Facilities” means the CEI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 2.
 - k.** “ATSI” means American Transmission Systems Inc.
 - l.** “ATSI Project Facilities” means the ATSI owned facilities that are to be constructed, modified and/or relocated in connection with the completion of the Project as described in this Agreement and in Schedule 1.
 - m.** “Project Facilities” means either the “ATSI Project Facilities” or the “CEI Project Facilities,” or both, as the context warrants.
 - n.** “Schedule of Work” means the schedule for performing the E & C Services as set forth in Schedule 3.
 - o.** “Written Notice” means a writing delivered via personal delivery or upon receipt by fax, e-mail (with confirmation of receipt) registered or certified U.S. mail or courier service to the individuals specified in Article 13 of this Agreement.
- 2. Roles and Responsibilities.** This Agreement addresses how costs, reimbursement and other responsibilities and obligations are allocated between the Parties.
- 3. Scope of E & C Services.** The E & C Services to be performed by ATSI and its Contractor(s) are described in the attached Schedule 1, “Scope of Work”. All E & C Services to be performed by ATSI shall meet the requirements of each of the National Electrical Safety Code (“NESC”), Good Utility Practice, pertinent PJM design criteria, ATSI and/or Contractor standards and specifications, and Law.

The E & C Services to be performed by CEI and its Contractor(s) are described in the attached Schedule 2, “Scope of Work”. All E & C Services to be performed by CEI shall meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design

criteria, and Law.

4. **Location of E & C Services.** To the extent necessary for the performance of the E & C Services, each Party shall arrange to have the appropriate easement or other necessary access right granted to the other Parties. Each Party will obtain any and all new rights-of-way, or other necessary access right, deemed necessary by such Party for the relocation/modification of its Project Facilities.
5. **Schedule of E & C Services.** Each Party shall use reasonable commercial efforts in order to perform its respective E & C Services in accordance with Schedule 3, "Schedule of Work." The "Preliminary Outage Schedule" is attached hereto as Schedule 4. The Schedule of Work and Preliminary Outage Schedule shall be revised as required by mutual agreement of the Parties, which agreement shall not be unreasonably withheld, conditioned or delayed.
6. **Changes to the Scope of E & C Services.** Any material change, modification, increase or reduction to the Scope of Work contained in Schedule 1 or Schedule 2, the ATSI Project Facilities, or the CEI Project Facilities, shall be subject to the prior mutual agreement of the Parties and no such material change, modification, increase or reduction shall be effective unless Schedule 6, "Scope of Work Amendment or Modification Form," is entered into by the Parties and executed by their duly authorized representatives.
7. **Safety.**
 - a. General. Each Party agrees that all work performed on Project Facilities by a Party that may reasonably be expected to affect the other Party shall be performed in accordance with Good Utility Practice and all Law pertaining to the safety of persons or property. A Party performing E & C Services within the boundaries of the other Party's facilities must abide by the safety rules applicable to the site. Notwithstanding the foregoing, when E & C Services are being performed in an area controlled by the other Party, the Party performing the E & C Services will abide by the safety, security and work rules applicable to that area.
 - b. Environmental Releases. Each Party shall notify the other Parties, first orally and then in writing, of the release of Hazardous Substances, such as any asbestos, Polychlorinated Biphenyls (PCBs), mercury or lead abatement activities, or any type of remediation activities, each of which may reasonably be expected to affect the other Party, as soon as possible but not later than twenty four (24) hours (unless a shorter period is required by Law) after the Party becomes aware of the occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies addressing such events.
8. **General Payment Responsibilities.**
 - a. ATSI's responsibility to reimburse CEI for the E & C Services to be performed by CEI and/or its Contractor(s) shall include, but not be limited to, the following related to the work described in Schedule 2:
 - i. Actual quantities of labor and material expended and the sum due for the E & C Services, including, but not limited to Contractor costs as well as the costs of restoring, protecting, temporarily or permanently relocating,

- and rearranging CEI property or other property or facilities;
- ii. Cost of surveying, verifying and locating existing facilities, including but not limited to, test pits, correspondence, meetings, and exchanges of information;
 - iii. Cost of engineering, supervision, equipment of and for the E & C Services and for the cost of pensions, insurance and taxes and other indirect costs for CEI and/or Contractor employees performing E & C Services;
 - iv. Cost of additional right of way acquisition and permitting costs as applicable. Said costs may include, but are not limited to, any and all permits required under Federal, State or local laws or regulations for CEI and/or its Contractor(s) to perform the E & C Services described herein and the costs of negotiations and acquisition of additional right of way;
 - v. Costs associated with any soil removal and/or use of Hazwoper-trained workers required for provision of the E & C Services; and
 - vi. Tax Gross-Up.
 1. CEI will treat payments made by ATSI to CEI pursuant to this Agreement as taxable contributions to capital for compliance purposes under the Internal Revenue Code and any applicable state tax laws. ATSI will initially pay any gross-up for income taxes in connection with its payments required by this Agreement. ATSI may, at its own expense, or CEI shall, upon the timely written request by ATSI and at ATSI's expense, seek final determination by the Internal Revenue Service of the tax status of payments made pursuant to this Agreement. If ATSI requests CEI to obtain such final determination, ATSI shall advance to CEI on a periodic basis as requested by CEI the estimated costs of obtaining such determination. In the event a final determination is made by the Internal Revenue Service that any payment by ATSI to CEI pursuant to this Agreement constitutes a non-taxable contribution in aid of construction, within thirty (30) days from receipt of such final determination, CEI shall refund to ATSI any payment(s) attributable to the amount determined to be non-taxable, plus interest received by, or credited to, CEI in connection with the treatment of its tax returns and the ultimate refund by taxing authorities related to such final determination.
 2. The Parties acknowledge that, with respect to any other services that may be performed by one Party hereunder for the other Party under this Agreement or otherwise: (A) ATSI's agreement to make any tax gross-up under this Article 8(a) (vi) for E & C Services shall not be deemed to establish any precedent; and (B) the Party seeking a tax gross-up for such other services shall provide written notice of the gross-up to the other Party.

6. Invoices and Payment.

- a.** Upon execution of this Agreement by the Parties, ATSI shall furnish to CEI a payment in the amount provided for in Schedule 5 to this Agreement, which represents the estimated costs and expenses for CEI's completion of the E & C Services relating to the work set forth in Schedule 2.
- b.** Within one hundred and twenty (120) days after CEI's completion of the E & C Services as set forth in Schedule 2, CEI shall furnish to ATSI a final reconciliation statement (the "Final Reconciliation Statement") specifying the nature and amount of the costs actually incurred by CEI in connection with the E & C Services relating to the work set forth in Schedule 2, including the installation, testing and commissioning related to the CEI Project Facilities, compared with the amount collected under the payment provisions of Schedule 5.

 - i.** In the event that the Final Reconciliation Statement contains total costs and expenses that exceed the amount collected under the payment provisions of Schedule 5, CEI will issue to ATSI a final reconciliation invoice (the "Final Reconciliation Invoice") contemporaneously with the Final Reconciliation Statement. ATSI shall furnish to CEI a payment for such difference within 30 days after ATSI's receipt of the Final Reconciliation Invoice.
 - ii.** In the event that the Final Reconciliation Statement contains total costs and expenses that are less than the amount collected under the payment provisions of Schedule 5, CEI shall furnish to ATSI a refund payment in the amount of such difference within 30 days after ATSI's receipt of the Final Reconciliation Statement.
- c.** In connection with the reconciliation, ATSI shall have the right to review, after a timely request therefore, ATSI's documentation of its costs and expenses for providing the E & C Services necessary to enable ATSI to verify the accuracy of the Final Reconciliation Statement. However, such review shall not extend the due date of, or extend, postpone or otherwise affect ATSI's obligation to pay within thirty (30) days any amounts due as described in the Final Reconciliation Statement.
- d.** In the event that ATSI disputes the correctness of any portion of the Final Reconciliation Statement, it shall pay the portion that is not in dispute. The Parties agree to negotiate in good faith to resolve the disputed amount. If a resolution of such dispute is not achieved thereby, then the Parties agree to resolve such dispute in accordance with Article 26 of this Agreement. Upon resolution of such dispute, the Parties will adjust the payment amount to reflect the resolution and any overpayment or underpayment will be reconciled in accordance with this Article 9 of this Agreement.

- 10. Inspection and Testing.** Each Party shall perform routine inspection and testing of its Project Facilities in accordance with Good Utility Practice. Each Party shall have the right, upon reasonable advance written notice, at its own expense, to inspect the other Party's Project Facilities.

11. Other Considerations.

- a.** All transmission outages in connection with the provision of E & C Services will or have already been scheduled by CEI in accordance with Schedule 4, "Preliminary Outage Schedule," will or have been approved by PJM, and are or will be reflected in the PJM Outage Schedule. No generating unit outages will be required to complete the scope of work related to the E & C Services for the Parties.
- b.** The cancellation or change of any transmission outage(s) scheduled by CEI in the performance of this Agreement will be subject to PJM requirements and approved by PJM.
- c.** All structure loading and electrical clearances will be designed to meet the requirements of each of the NESC, Good Utility Practice, pertinent PJM design criteria and CEI and/or FirstEnergy standards and specifications.
- d.** In the event there are any ATSI Project Facilities constructed under the terms of this Agreement, they shall be the sole property of the appropriate ATSI Party, and the appropriate ATSI Party shall be solely responsible for their operation, repair and maintenance. The CEI Project Facilities constructed under the terms of this Agreement shall be the sole property of CEI, and CEI shall be solely responsible for their operation, repair and maintenance.
- e.** Schedules 1 through 5, inclusive, are incorporated by reference into this Agreement in their entirety, and any modification to the Scope of Work for E & C Services effected through the use of Schedule 6 will likewise be incorporated by reference into this Agreement.

- 12. Contractors.** Nothing in this Agreement shall prevent each Party from utilizing the services of a Contractor(s) as it deems appropriate to perform its obligations under this Agreement, provided, however, that each Party shall require its Contractor to comply with all applicable terms and conditions of this Agreement in performing such obligations.

13. **Written Notice.** All notices pertaining to this Agreement shall be in writing and directed to the following individuals for their respective organizations, provided however that any Party may change the individuals designated to receive Written Notice by providing Written Notice of such change to the other Party:

| | | | |
|---------------------|---|------------------|--|
| a. For ATSI: | | With a copy to : | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

| | | | |
|--------------------|---|-----------------|--|
| b. For CEI: | | With a copy to: | |
| Name: | Michael J. Thorn FERC & Wholesale Connection Support, Manager | Name: | Legal Department Attn: Attorney for FERC & Wholesale Connection Support |
| Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 | Address: | FirstEnergy Service Company 76 South Main Street Akron, OH 44308 |
| Phone: | (330) 384-3889 | Phone: | (330) 761-4307 |
| Fax: | (330) 761-4388 | Fax: | (330) 777-6521 |
| Email | _____ | Email | _____ |

14. **Assignment.** Neither this Agreement nor any interest therein shall be assigned by any Party without the prior written consent of the other Party; provided, however, that any Party may assign this Agreement, in whole or in part, to an Affiliate or successor of such Party that owns and operates all or any portion of such Party's transmission system (meaning those facilities of such Party that are classified as transmission facilities in the PJM Open Access Transmission Tariff), including a regional transmission organization, an independent system operator or an independent transmission company. Notwithstanding the foregoing, any Party may assign this Agreement to a successor to all or substantially all of the assets of such Party by way of merger, consolidation, sale or otherwise, provided that such successor assumes and becomes liable for all of such Party's duties and obligations hereunder. No assignment of rights or obligations under this Agreement by a Party will relieve such Party from liability and financial responsibility for the performance thereof after such assignment unless and until the assignee agrees in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party have consented in writing to such assumptions

and to a release of the assigning Party from such liability, said consent not to be unreasonably withheld or delayed.

15. **No Waiver**. A Party's failure to insist in any one or more instances upon strict performance of any provision of the Agreement, or failure or delay to take advantage of any of its rights or remedies hereunder, violation, or default, shall not be construed as a waiver by the Party of any such performance, provision, right, breach, violation, or default, either then or for the future. Any waiver shall be effective only if in writing and signed by each Party's authorized representative, and only with respect to the particular case expressly covered therein.
16. **Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the law of the State of Ohio. Any legal claim, suit, proceeding, or action brought by a Party shall be brought in an Ohio state court or a federal court located in Ohio.
17. **Headings**. The headings assigned to the Articles of this Agreement are for convenience only and shall not limit the scope and applicability of the Articles.
18. **Survival**. All provisions providing for limitation of or protection against loss or liability of the Parties, including all protections and indemnities, shall survive termination, suspension, cancellation or expiration of this Agreement.
19. **Force Majeure**. The Parties acknowledge that Force Majeure events may affect the performance of this Agreement and agree as follows:
 - a. The Parties shall not be liable to each other for any breach or failure to perform under this Agreement caused by Force Majeure, provided that Force Majeure shall not excuse ATSI from its obligations to pay CEI under this Agreement for all costs and expenses for E & C Services, whether such costs and expenses were incurred before or after the Force Majeure event.
 - b. Where Force Majeure continues for more than ninety (90) days, any Party may, at its option, terminate this Agreement upon thirty (30) calendar days advance Written Notice. In the event of termination in accordance with this Article of the Agreement, no Party shall have any further responsibility or liability to the other, except for the payment for all costs and expenses for E & C Services relating to the Radial Modifications, whether such costs and expenses were incurred before or after the Force Majeure event performed on or before the date of termination.
20. **Environmental**. In the event that Hazardous Substances are encountered in the course of E & C Services, the following shall apply:
 - a. No Party shall be responsible for the handling, removal, disposal or remediation of the Hazardous Substances, unless the presence of said Hazardous Substances was caused or likely to have been caused by that Party, or its Contractor(s). Such Party shall be responsible for satisfying reporting requirements required by Law.
 - b. In the event Hazardous Substances are found on ATSI property, or on property occupied by ATSI pursuant to easement, license or other such right, and were not caused by CEI or its Contractor(s), ATSI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of

said Hazardous Substances. ATSI shall be responsible for satisfying reporting requirements required by Law.

- c. In the event Hazardous Substances are found on CEI property, or on property occupied by CEI pursuant to easement, license or other such right, and were not caused by ATSI or its Contractor(s), CEI shall be responsible for bearing the costs and expenses associated with the handling, removal, disposal or remediation of said Hazardous Substances. CEI shall be responsible for satisfying reporting requirements required by Law.

21. Limitations of Liability. The following limitations of liability shall apply:

- a. No Party shall be liable for any delays in performing the E & C Services, provided that a Party, its Contractor(s) or suppliers do not willfully act to delay the Project.
- b. The liability of a Party under this Agreement shall be limited to direct actual damages.
- c. Except as provided in Section 22, no Party shall be liable for any special, indirect, incidental, punitive, or consequential losses, damages, judgments, fines, penalties, costs or expenses whatsoever including, but not limited to: (i) delayed, lost or reduced profits, revenues, efficiency, productivity, bonding capacity, business opportunities; or (ii) increased or extended overheads, operating, maintenance, depreciation, financing costs or expenses arising out of, related to, or in connection with the performance or breach of this Agreement whether based upon contract, tort (including negligence), warranty, strict liability or under any other legal or equitable theory.

22. Indemnification.

- a. General.

Each Party (an "Indemnifying Party") shall indemnify and hold harmless the other Party (the "Indemnified Party"), and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the Indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the Indemnified Party's intentional misconduct or negligence.

- b. Obligation to Defend.

An Indemnifying Party shall, at the Indemnified Party's option and at the Indemnifying Party's own cost and expense, defend the Indemnified Party, and the Indemnified Party's officers, agents, servants, employees, shareholders, Contractors, subcontractors, suppliers, successors, and assigns, from and against

any and all liabilities, losses, liens, damages, judgments, fines, penalties, fees or expenses (including reasonable attorneys' fees) due to personal injury, death, or occupational disease of any person, including, but not limited to, the Indemnified Party's employees or agents; or due to loss or damage to any real or personal property; which in whole or in part arise out of, relate to, result from, or are connected with the indemnifying Party's negligence or intentional misconduct in the performance of this Agreement, except to the extent caused by the indemnified Party's intentional misconduct or negligence. Without the consent of the applicable Indemnified Party, which shall not be unreasonably withheld, an Indemnifying Party may not settle any such claim for any relief (including monetary damages) or any claim in the nature of regulatory or similar legal enforcement action by a governmental authority. For purposes of fulfilling its duties to defend, indemnify and hold harmless, each Party waives its immunities, rights, or defenses that may be available under applicable Worker's Compensation Laws.

23. Insurance.

- a. Prior to the start of E & C Services, each Party performing E & C Services will at its own expense, procure and maintain in effect during performance and until final completion and acceptance of any E & C Services under this Agreement the following minimum insurance coverages with carriers acceptable to the other Party, including:
 - i. Workers' Compensation insurance in accordance with statutory limits, as required by the State of Ohio, and Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) per occurrence.
 - ii. Commercial General Liability insurance providing coverage for premises, bodily injury, property damage, personal injury, advertising liability, blanket contractual liability covering a Party's obligations under this Agreement, products and completed operations for not less than three (3) years from the date that Party completes the E & C Services, coverage for independent contractors and broad form property damage coverage with limits of not less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of three million dollars (\$3,000,000) per location where E & C Services are performed.
 - iii. Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired vehicles, trailers or semi-trailers designed for travel on public roads used by each Party in the connection with the E & C Services with a combined single limit of not less than one million dollars (\$1,000,000) for each occurrence of bodily injury, including death, and property damage.
 - iv. Excess or Umbrella Liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence with an annual aggregate of five million dollars (\$5,000,000) per location where the E & C Services are performed. This limit applies in excess of each of the coverages set forth above in Article 23(a)(i) (Employer's Liability), Article 23(a)(ii)

(Commercial General Liability insurance) and Article 23(a)(iii) (Commercial Automobile Liability insurance), which are scheduled as primary. Any of the above per-occurrence limits may be satisfied by a combination of primary and excess liability coverage.

- v. Pollution/Environmental Liability insurance with a minimum limit of five million dollars (\$5,000,000) each occurrence where the work involves or includes a Party handling, transporting, disposing, or performing work or operations with Hazardous Substances. For insurance purposes, the terms and definitions relating to Pollution Liability as utilized in the AEGIS Excess Liability policy will be used.
 - vi. The insurance coverages provided under this Agreement shall not contain any restrictions or limitations that are inconsistent with each Party's rights under this Agreement.
 - vii. All above-mentioned insurance policies shall provide the following: be primary to any other insurance carried by each Party with respect to such Party's negligence; contain standard cross-liability provisions; and provide for a waiver of all rights of subrogation against each Party or its insurers.
- b.** Additional Insured Requirement: The Commercial General Liability and Excess or Umbrella Liability insurance policies shall name the other Party and their successors and assigns, as additional insureds and each Party shall maintain the required coverages for a period of not less than three (3) years from the date a Party completes the E & C Services.
 - c.** Evidence of Insurance: Prior to the start of any E & C Services by and subsequently upon request of a Party, such Party shall deliver to the other Party's contracting representatives, evidence of the required insurance coverage in the form of Certificates of Insurance. Each Party shall provide at least thirty (30) days prior written notice to the other Party in the event the minimum insurance coverages outlined in this Section 23 are canceled or non-renewed.
 - d.** Ratings: All insurance coverages required under this Agreement shall be provided by insurance companies having ratings of A-/VII or better in the Best's Key Rating Insurance Guide (latest edition in effect at the latest date stated in the Certificates of Insurance referred to in Article 23(d) above (Evidence of Insurance)).
 - e.** Failure to Obtain and Maintain Insurance: Failure to obtain and maintain the insurance required under this Agreement shall constitute a material breach of this Agreement and the breaching Party will be liable for any and all costs, liabilities, and damages (including attorney's fees, court costs, and settlement expenses) resulting to the other Party from such breach.
 - f.** Each Party's Obligations Not Limited: The insurance requirements set forth above are to protect each Party from any and all claims by third parties, including employees of each Party, its agents, Contractor(s) and invitees. Said insurance, however, is in no manner to relieve or release a Party, its agents, Contractor(s) and invitees from, or limit their liability as to, any and all obligations assumed

under this Agreement.

24. Breach.

- a. A breach of this Agreement shall occur upon: (a) the failure of a Party to pay any amount when due; (b) the failure of a Party to comply with any material term or condition of this Agreement, including any material breach of a representation, warranty or covenant; (c) any assignment of this Agreement in a manner inconsistent with its terms; or (d) the failure of a Party to provide access rights, or a Party's attempt to revoke or terminate access rights, that are required by the other Party to perform E & C Services under this Agreement.

25. Termination.

- a. This Agreement shall automatically terminate upon the completion of the E & C Services and payment in full pursuant to the Final Reconciliation Statement.
- b. This Agreement may be terminated by mutual consent of the Parties.
- c. This Agreement may be terminated by a Party in the event that a Party breaches this Agreement and the breach has not been cured within sixty (60) calendar days after the affected Party provides Written Notice of such breach to the breaching Party in accordance with the notification provisions of Article 13. During the sixty (60) calendar days following the Party's delivery of notice of breach pursuant to Article 13 to the breaching Party, the non-breaching Party may at its sole discretion suspend its performance under this Agreement.
- d. Upon the termination of this Agreement for reasons other than pursuant to Article 25(a), each Party shall be obligated, if directed by the other Party, to remove its equipment, facilities, and debris related to the E & C Services from the directing Party's property and restore such property, as close as practicable, to its condition prior to the commencement of the E & Services. The access and other property rights granted to each Party under this Agreement shall survive such termination to the extent needed by each Party to perform its obligations under this Article 25(d).

26. Dispute Resolution.

- a. Notice of any claim or dispute, which any Party may have against any other, arising out of this Agreement, shall be submitted in writing to the other Party in accordance with the notification provisions of Article 13, not later than sixty (60) days after the circumstance which gave rise to the claim or dispute was to have taken place. If agreed by each Party, the Parties may submit a dispute to mediation and the following provisions shall apply.
- b. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties as soon as practical after the Parties have agreed to submit the matter to the mediation process. Each Party shall provide the other with a list of no less than three (3) and no more than five (5) mediators, and the other Party or Parties may strike as many names as it chooses. If the Parties cannot agree on a mediator, a mediator will be

selected by the American Arbitration Association (“AAA”) at the request of a Party.

- c. The Parties agree that any and all mediation will be conducted in the AAA offices in or nearest to Akron, Ohio, and in the manner specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute.
- d. Unless otherwise agreed to, the mediation process shall be concluded not later than six (6) months after the date that it is initiated. The decision must be in writing and contain the reasons for the decision. The mediator shall have the authority only to recommend interpretations of the terms and conditions of this Agreement and shall have no power to modify any term or condition of this Agreement.
- e. If any dispute is not settled by mediation, then any Party may pursue any and all rights and remedies available to it under this Agreement, in law or in equity. Notwithstanding the mediation hereunder, the Parties have the right to proceed directly to court to seek relief in law or in equity.
- f. The submission of a dispute to mediation shall not limit or in any way affect the applicable Party’s right to effect remedies or limit such Party’s rights under this Agreement or otherwise.

27. Audit of Records.

- a. Maintenance of Records. For any E & C Services performed hereunder, each Party shall keep a detailed account of all costs necessary for proper financial management with a system in accordance with Generally Accepted Accounting Principles, consistently applied. Maintaining proper records shall not relieve a Party of its responsibility to document properly all invoices submitted for payment.
 - i. Each Party, including its agents or employees, shall have access to the other Party’s books, vouchers, memoranda, records, data, and other documents relative to the E & C Services, for inspection, audit, or reproduction. Each Party shall preserve all of the above records for two years after final payment, during which time a Party shall have the right to perform any audit, inspection, or reproduction it may desire. If discrepancies or questions arise, the records shall be preserved until an agreement is reached between the Parties. Each Party reserves the right to recover any overcharges or incorrect charges from the other Party.
 - ii. Any audit conducted by a Party shall be at its expense; provided, however, that if it is determined that a Party incorrectly charged the auditing Party, the former shall be liable to the other for all charges, including the amount of the overcharge or incorrect charge and cost of audit or other investigation.
 - iii. Time of Audit. Audits shall take place at times and places to be mutually agreed upon.

28. **Conflicts.** In the event of any conflict between a provision in this Agreement and that of a Schedule, such conflict shall be resolved in favor of the terms set forth in such Schedule.
29. **Entire Agreement.** This Agreement constitutes the full, complete and only agreement between the Parties at this time with respect to the E & C Services and supersedes all prior communications, agreements, and understandings, whether written or oral, concerning such matters. This Agreement cannot be modified or amended verbally and can only be changed via a formal written agreement between the Parties, executed by both their duly authorized representatives.
30. **Existing Arrangements.** Nothing in this Agreement shall supersede, nullify or otherwise modify any pre-existing policies, programs, procedures or arrangements between the Parties. In the event of any conflict between a term or condition of this Agreement and any such pre-existing policy, program, procedure or arrangement, the latter shall control.

[Signatures on the next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4999

AMERICAN TRANSMISSION SYSTEMS INC.

By: /s/ Richard A. Ziegler
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: /s/ Thomas R. Pryatel
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services

Schedule 1

Scope of Work for ATSI

- **Horizon:** Install and own new relays and associated equipment

Schedule 2

Scope of Work for CEI

- **Horizon:** Remove and retire existing PLC and associated equipment

Schedule 3

Schedule of Work

ATSI and CEI will work collaboratively to develop timely schedules and milestone dates for the work to be completed on the projects to complete the Scope of Work described in Schedules 1 and 2 on or about:

- **Horizon:** December, 2018

Schedule 4

Preliminary Outage Schedule

- **Horizon:** December, 2018

Schedule 5

Payment Schedule

Actual costs incurred by CEI estimated as defined below and will be charged to ATSI after the project is placed into service.

- **Horizon:** \$2,000

Schedule 6

SCOPE OF WORK AMENDMENT OR MODIFICATION FORM

This SCOPE OF WORK AMENDMENT OR MODIFICATION FORM, dated as of _____, is by and between American Transmission System Inc. (“ATSI”) and The Cleveland Electric Illuminating Company (“CEI”). ATSI and CEI may each be referred to herein individually as a “Party,” and together as the “Parties.”

WITNESSETH

WHEREAS, ATSI and CEI are parties to an Engineering and Construction Services Agreement dated []; and

WHEREAS, the Engineering and Construction Services Agreement between ATSI and CEI contemplates that the Parties may from time to time agree to certain modifications in the Scope of Work; and

WHEREAS, by execution of this Scope of Work Amendment or Modification Form the Parties intend to alter the Scope of Work provided in the Engineering and Construction Services Agreement; and

WHEREAS, but for the modifications specifically described below, the Parties intend for all other terms and provisions of the Engineering and Construction Services Agreement to be applicable and take precedence over this Scope of Work Amendment or Modification Form.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1.1 Additional Work to be Performed by ATSI:

1.2 Additional Work to be Performed by CEI:

2.1 Cost Responsibilities for the Additional Work contemplated in Sections 1.1 and 1.2:

IN WITNESS WHEREOF, ATSI and CEI have caused this Scope of Work Amendment or Modification Form to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

AMERICAN TRANSMISSION SYSTEMS INC.

By: _____

Name: _____

Title: _____

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4982


AMERICAN TRANSMISSION SYSTEMS INC.

By: 
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: 
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4995


AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By: 
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

TOLEDO EDISON COMPANY

By: 
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4997


AMERICAN TRANSMISSION SYSTEMS, INCORPORATED

By: 
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

TOLEDO EDISON COMPANY

By: 
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written by their duly authorized representatives.

Service Agreement No. 4999

AMERICAN TRANSMISSION SYSTEMS INC.

By: Richard A. Ziegler
(Signature)

Name: Richard A. Ziegler
(Print)

Title: Director, FERC & RTO Technical Support

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: Thomas R. Pryatel
(Signature)

Name: Thomas R. Pryatel
(Print)

Title: Director, ED Operations Services