

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

This Grant Agreement (“Agreement”) is made and entered into by and between the American Public Power Association (“APPA”) and **Rochelle Municipal Utilities** (“Grantee” and, collectively with APPA, the “Parties”).

WHEREAS, the Board of Directors of the APPA has established the Demonstration of Energy & Efficiency Developments (“DEED”) program which is dedicated to improving the operations and services of public power utilities by supporting and demonstrating its members’ innovative activities through research, funding and education;

WHEREAS, Grantee has submitted a proposed demonstration project, in a DEED proposal submitted on **08/15/2014**, which is incorporated herein by reference, with data including a project description, the rationale, schedule, and estimated cost of the project, together with a statement of why the project is widely applicable to members of APPA, and supporting technical material;

WHEREAS, the DEED Board of Directors has found the proposed project to be meritorious and worthy of a DEED Grant;

NOW, THEREFORE, the Parties agree as follows:

1. **Funding.** APPA will supply a DEED Grant in the amount of **\$50,000** to Grantee. Payment shall be made within 30 days of receipt of invoice at APPA, as further described in Sections 9 and 10.

2. **Project and Project Personnel.** The project to be undertaken by Grantee is as follows: **RMU is looking at further steps in the space of air conditioning demand management and are researching the commercial roof top unit segment. It is estimated that over 250 roof top units exist in RMU's service area. RMU is now in stage of expanding its engagement in RTU's and is actively training its local HVAC installers in RTU optimizing equipment.**

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

This project would evaluate the impact of REGEN's Swarm technology to create a city wide RTU control 'cloud' to minimize concurrent demand. Swarm Energy Management employs swarm logic to allow equipment in buildings to communicate and coordinate to minimize the number and size of loads unnecessarily running concurrently, thereby reducing peak demand. This strategy can be used as an excellent, fine-grained load control strategy for Demand Response. It provides more effective management of occupant comfort during DR events than conventional load limiting or setback strategies, as more fully described in the Grantee's proposal *Roof Top Cluster Unit Optimizing*. The proposal, as well as the document [DEED Grant Requirements](#) containing instructions related to preparing and submitting Quarterly Reports, Final Reports, and Summary Abstracts, are incorporated herein by reference and made a part of this Agreement. It is understood that the key personnel of this project are:

Dan Westin, Business and Financial Analyst, RMU.

3. **Term.** The DEED Grant shall commence on the date of Agreement execution. The Grantee is required to complete the project as approved by the DEED Board of Directors by **10/1/2015** as noted in the proposal. Any changes to the completion date must be addressed as further described in Section 6.

4. **Subcontractors.** If Grantee proposes to hire a subcontractor to work on the project and such subcontractor is not identified in Grantee's original project proposal, Grantee shall request APPA's written permission to do so. In addition, Grantee shall ensure that APPA's rights under this Agreement are not diminished by the use of a subcontractor. Any agreement between Grantee and a subcontractor shall incorporate the terms and conditions of this Agreement, as necessary. At a minimum, any such agreement between Grantee and a subcontractor shall require a subcontractor:

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

- (a) to maintain books, records, and other documents and appropriate accounting procedures and practices sufficient to reflect receipt and disposition of project funds and total costs (direct and indirect) of the project, to retain such books, records and other documents until the expiration of three years from the date of final payment or completion of the project, and permit inspection and audit of such books, records or other documents by APPA or its contractors;
- (b) not to delegate or transfer to another party the responsibility for carrying out the project or the use of project funds unless approved in writing by APPA and Grantee;
- (c) to notify the Grantee and APPA of all proposed major project changes (such as those identified in Section 6 of this Agreement) in a manner consistent with the provisions of that Section, and to provide an opportunity for APPA and Grantee to disapprove any such changes in a manner consistent with the provisions of Section 6 of this Agreement;
- (d) not to terminate the project except for good cause, and if APPA or Grantee finds that the subcontractor has terminated the project work without good cause, all funds paid by Grantee to the subcontractor shall be returned, at the discretion of APPA, to Grantee or to APPA;
- (e) to return unexpended funds to Grantee or APPA, as determined by APPA, in the event that the work is terminated for good cause or the work is completed prior to expenditure of all funds; and
- (f) to expressly agree that APPA owns the intellectual property rights in the project by having each subcontractor sign Attachment A, which acknowledges that all information, materials and work product, including reports, abstracts, videos, guidebooks, software programs, documentation, and other deliverables created by a subcontractor pursuant to this Agreement (“Subcontractor Work Product”) shall be considered a “Work Made for Hire” as defined in the Copyright Act.

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

No project shall be commenced without an agreement in the form of Attachment A signed by the subcontractor. Grantee shall provide APPA with a copy of the agreement between Grantee and the subcontractor (including Attachment A) before any payment of the DEED Grant award will be made.

5. Accounting and Records. Accounting for project funds (including receipts, Grantee or other contributions, and expenditures) will be in accordance with generally accepted accounting principles and practices, consistently applied, regardless of the source of funds.

Grantee shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly (a) the amount, receipt, and disposition by Grantee of all assistance received for the project and (b) the total cost of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project.

Grantee's facilities or such facilities as may be engaged in the performance of the project for which the DEED Grant has been awarded, and records shall be subject at all reasonable times to inspection and audit by APPA.

Grantee shall preserve and make its records available to APPA until the expiration of three years from the date of final payment or completion of the project under this DEED Grant, whichever is later.

All APPA assistance received by Grantee pursuant to this Agreement shall be expended by Grantee solely for carrying out the approved project. Grantee may not delegate or transfer responsibility for the use of such funds. Grantee shall comply with all terms and conditions of the DEED Grant, to use grant funds efficiently and effectively within the approved budget, and to supervise completion of the project in a diligent and professional manner. This responsibility may be neither delegated nor transferred without written permission by APPA.

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

6. Project Changes. Grantee shall promptly notify APPA in writing by e-mail to DEED@PublicPower.org or by certified mail (return receipt requested) of all proposed major project changes, including, but not limited to:

- (a) major changes in the technical plans or specifications for the project;
- (b) acceleration or deceleration in the time of performance of the project, or any major phase thereof;
- (c) major changes that may increase or decrease the total cost of a project;
- (d) major changes that may affect the approved scope of a project; and
- (e) major changed site conditions affecting the project.

APPA may disapprove project changes in writing not later than three weeks after receipt of notice. Failure of Grantee to give notice, or disapproval by APPA of the proposed change, shall result in disallowance of costs incurred that are attributable to the change.

Approved project changes that do not substantially alter the objective or scope of a project may give rise to grant amendments to increase or decrease the dollar amount, the term, or other provisions of the DEED Grant. A DEED Grant amendment shall be effected only by a written amendment to this Agreement signed by both Parties. Requests for modifications from this Agreement shall be submitted as far in advance as the exigencies of the situation will permit. Each request for a modification shall contain at a minimum:

- (a) A full description of the modification and the circumstances in which it will be used;
- (b) A description of the intended effect of the modification; and
- (c) Detailed reasons supporting the request, including any pertinent background information that will contribute to a better understanding of the modification sought.

7. Termination. If, without written notification to APPA, the project has not been initiated within six months of the effective date of this Agreement, the project will be subject to termination by the DEED Board of Directors. Grantee shall not terminate the project except for

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

good cause. If APPA finds Grantee has terminated the project work without good cause, then it shall terminate the DEED Grant award, and all APPA grant funds previously paid to Grantee shall be returned as final settlement. In the event the project is terminated for good cause or completed prior to expenditure of all funds provided by APPA, the proportionate share of APPA's DEED Grant shall be refunded. Notwithstanding anything to the contrary in this Agreement, APPA may terminate this Agreement at its option with or without cause by providing written notice to Grantee. Unless otherwise stated in the termination notice, termination shall be effective upon receipt of the notice. After the effective date of termination, neither Party shall have any further obligation to the other under this Agreement except for Grantee's obligations under the provisions where a continuing obligation is implied, and APPA's obligation to pay Grantee a portion of the Agreement's fixed price equal to the percentage of work required by the Agreement that is actually completed.

Grantee shall deliver to APPA or its designee(s) upon request all information and work in tangible form created or compiled by Grantee or its subcontractor(s) in performing services under this Agreement.

8. Press Release. Press releases and other public dissemination of information by the Grantee shall acknowledge APPA support of the project through a DEED Grant.

9. Reports. Grantee shall prepare and submit to APPA quarterly project reports according to directions in the document [*DEED Grant Requirements*](#). These reports will be posted to the DEED project database, located on APPA's website for viewing by DEED members. Capturing the project in photos is encouraged. Electronic copies of project photos taken during the course of the project term shall be submitted to DEED@PublicPower.org. By submitting project photos to APPA, Grantee grants to APPA a non-exclusive limited worldwide license to use the project photos online and offline for promotional purposes. According to instructions in the document [*DEED Grant Requirements*](#), Grantee also shall submit to APPA/DEED: (1) an

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

acceptable, detailed final report relating to the conduct and results of the approved project, describing activities, cost, bibliography, achievements, problems, results, and recommendations, to be submitted within six (6) months of project completion; and (2) a completed "DEED Project Summary Abstract;" and (3) any other deliverable as described in Grantee's original proposal or grant approval letter.

APPA will withhold 25 percent of the DEED Grant award pending satisfactory completion of said report and abstract. In the event the final report and abstract are not provided by the Grantee by the due date, APPA may complete the final report and/or abstract itself or hire a third party to do so. APPA may utilize up to the 25 percent withheld to pay for the costs of production and reduce the amount otherwise available to Grantee in the same amount.

10. Payment. The standard method of project payment shall be based on invoices for work completed to date. No more than 25 percent of the total DEED Grant award may be provided to Grantee at the inception of the project except in rare instances when the DEED program administrator may increase this amount up to a total of 50 percent due to special circumstances.

11. Work Made for Hire and Limited License. Grantee acknowledges that all information, materials and work product, including reports, abstracts, videos, guidebooks, software programs, source code, object code, system specifications, documentation, abstracts, and summaries and derivatives thereof, and other deliverables, created pursuant to this Grant (the "Work") shall be deemed a "Work Made for Hire," as defined in the Copyright Act of 1976, as amended. The Work and all intellectual property contained therein, including but not limited to copyrights, trademarks, designs, logos, trade names, creative concepts, patents, mask-work, trade secrets, moral rights, artwork, and proprietary information, which is conceived, reduced to practice, authored, developed or created by Grantee under this Agreement, is and shall remain the exclusive property of APPA. To the extent that any portion of the Work may not, by operation of

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

law, be a Work Made for Hire, in accordance with the terms of this Agreement, Grantee hereby irrevocably assigns to APPA all right, title and interest worldwide, including the copyright and all renewals, in the Work and agrees to execute any additional necessary paperwork to effectuate such assignment. Any software programs especially developed by Grantee or its subcontractors during the course of the project, or substantially modified for use in the project, shall be supplied to APPA in a form that may be used by others independently of Grantee's proprietary programs or computer configurations. Equipment purchased in support of the DEED Grant may be retained by Grantee after acceptable conclusion of the project, unless otherwise directed.

Limited License. APPA grants to Grantee a nonexclusive, non-transferable, royalty-free, limited license to use, reproduce, and distribute the Work for noncommercial, educational purposes. This license does not convey to Grantee any right, title or interest in the Work nor in any portion of the Work.

12. Representations and Warranties. Grantee represents and warrants for itself and any subcontractors that:

(a) The Work and Subcontractor Work Product are original and do not infringe on the intellectual property rights of any third party, or constitute defamation, invasion of privacy, or the violation of any right of publicity or any other right of any party; (b) Grantee and subcontractor has obtained all necessary licenses and/or permissions to use third party content that may appear in the Work and/or Subcontractor Work Product; (c) Grantee and any subcontractors shall maintain in strict confidence any confidential or proprietary information shared by APPA during the course of this Agreement, and such information shall not be disclosed to any third party, either directly or indirectly; and (d) Grantee has the unencumbered right to enter into this Agreement. Grantee agrees to defend, indemnify, and hold harmless APPA, its officers, directors, members, and employees for any losses, costs, damages, liabilities and expenses (including attorneys' fees and court costs) arising out of any breach of the warranties set forth in this Section 12.

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

13. **Fees.** Grantee also warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide offices established and maintained by Grantee for the purpose of securing grants or business. For breach or violation of this warranty, APPA shall have the right to terminate this DEED Grant Agreement without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14. **Indemnifications.** It is understood that this DEED Grant Agreement is not a joint venture and that Grantee is not an agent of APPA. APPA assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities undertaken with the financial support of the APPA DEED Grant, whether with respect to persons or property of Grantee or third parties. Grantee shall indemnify (including court costs and attorneys' fees) APPA if APPA is made a party to any litigation, arbitration, mediation or negotiations for activities connected with this DEED Grant Agreement, unless APPA, its employees or agents are found to be grossly negligent or otherwise directly at fault.

15. **Taxes.** Except with respect to taxes which may be due as a result of income to APPA, Grantee and any subcontractor shall be responsible for payment of all taxes for which Grantee, subcontractor or APPA may be liable in connection with this Agreement, including any sales, use, or other tax owed for work products delivered or services performed by Grantee or a subcontractor in connection with this Agreement. Except as required by law, APPA shall not withhold federal, state or local income tax, or any other tax, from any payment to Grantee pursuant to this Agreement.

The Parties hereto have executed this Agreement, effective as of the _____ day of _____, 20__.

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

American Public Power Association

DEED Program

Rochelle Municipal

Name: _____

Utilities: _____

Signature: _____

Name: _____

Title: _____

Signature: _____

Date: _____

Title: _____

Date: _____

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

ATTACHMENT A

Work Made for Hire Assignment Agreement:

Agreement made by and between _____ 1) [a United States Citizen residing at _____ and born in 19____] or _____ 2) [a corporation located and doing business at _____] (hereinafter referred to as the “Subcontractor”) and, American Public Power Association, a corporation of the District of Columbia located and doing business at 1875 Connecticut Avenue, Northwest, Washington, D.C., 20009 (hereinafter referred to as “Commissioning Party”).

WHEREAS, the Subcontractor is not an employee of the Commissioning Party; and

WHEREAS, the Subcontractor was commissioned by the Commissioning Party to create (project name) _____(hereinafter the “Subcontractor Work Product”) at the request of and for the benefit of the Commissioning Party.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. All Subcontractor Work Product is considered a “Work Made for Hire” as defined in the Copyright Act. The Subcontractor Work Product and all intellectual property contained therein, including, but not limited to, copyrights, trademarks, designs, logos, trade names, creative concepts, artwork, software, and proprietary information, which is conceived or authored by Subcontractor under this Agreement, whether or not developed for APPA, is and shall remain the exclusive property of APPA. To the extent that any portion of the Subcontractor Work Product may not, by operation of law, be a Work Made for Hire in accordance with the terms of this Agreement, Subcontractor hereby assigns to APPA all right, title and interest in and to the Subcontractor Work Product.

2. Subcontractor represents and warrants to the Commissioning Party the following:

**Demonstration of Energy & Efficiency Developments (DEED) Grant Agreement
Rochelle Municipal Utilities
Roof Top Cluster Unit Optimizing**

a) that the Subcontractor Work Product is original and does not infringe the intellectual property rights of any third party, or constitute defamation, invasion of privacy, or the violation of any right of publicity or any other right of any party;

b) Subcontractor has obtained all necessary licenses and/or permissions to use third party content that may appear in the Subcontractor Work Product;

c) Subcontractor shall maintain in strict confidence a confidential or proprietary information shared by the Commissioning Party during the course of this Agreement, and such information shall not be disclosed to any third party, either directly or indirectly; and

d) Subcontractor has the unencumbered right to enter into this Agreement.

3. Subcontractor shall indemnify and hold the Commissioning Party, its officers, directors, members and employees harmless for any costs, including, but not limited to, attorneys fees, which arise out of any breach of the warranties set forth in Section 2.

4. Subcontractor hereby acknowledges that [it or he/she] is an independent contractor for purposes of this Agreement.

5. This Agreement may not be modified or amended unless it is in writing and signed by both parties.

The parties hereto have executed this Agreement as of the date indicated below.

Subcontractor: _____

Name: _____

Signature: _____

Title: _____

Commissioning Party: American Public Power Association

Name: _____

Signature: _____

Title: _____

On this _____ day of _____ 20__.