

ATTACHMENT A

Memorandum of Understanding

This Memorandum of Understanding (the “Memorandum”) by and between The Plumbing Foundation City of New York, Inc., located at 535 8th Avenue, 17th Floor, New York, NY 10018 (hereinafter referred to as “the Foundation”) and all Gas Operator Qualification Members (hereinafter referred to as “GOQ Members” or “member employers”) (collectively, the “Parties”). The Parties agree to the terms of this Memorandum for the purpose of establishing the Foundation as the OQ Administrator as defined herein with respect to the requirement for Licensed Master Plumbers (“LMPs”) and those within their employ to comply with changes to the New York Code of Rules and Regulations (“NYCRR”) related to gas. Specifically, in Case No. 14-G-0357, the New York State Public Service Commission (the “PSC”) proposed a change to the definition of “service line” which will require LMPs and/or those in their employ to conduct interior natural gas distribution jurisdictional piping safety inspections and leak surveys in accordance with all local, state, and federal requirements, potentially including New York City Local Law 2016-152¹, State and Federal Pipeline Safety rules specified in 16 NYCRR Part 255 and 49 CFR Part 192, and jurisdictional Utility Operator procedures. These changes require LMPs and/or those in their employ to take a course and examination relevant to the Operator Qualification Tasks described herein and require LMPs and/or those in their employ to take a baseline drug and alcohol test and be subject to random and reasonable suspicion drug and alcohol testing in compliance with the Pipeline and Hazardous Materials Safety Administration (“PHSMA”) of the United States Department of Transportation (“USDOT”).

WHEREAS the Parties desire to set out the terms of their respective duties, rights, responsibilities, and limitations of liability; and

NOW THEREFORE, the Parties mutually agree to the following:

I. Purpose. The Purpose of the Foundation’s role is to assist with the New York City plumbing industry’s transition due to the above referenced changes, therefore the Foundation is agreeing to act as the OQ Administrator, as defined herein.

II. Definitions.

- A. “CT86” means Covered Task 86, Conducting Interior Jurisdictional Piping Safety Inspections, developed by the Northeast Gas Association (“NGA”) in collaboration with and approved by Utilities, fully compliant with applicable requirements of Utility operating procedures and 49 CFR 192 with regard to Operator Qualification, Periodic Atmospheric Corrosion, Leak Survey Inspections and Inspection for Abnormal Operating Conditions (AOC’s) aka Substandard Conditions.

¹ Local Law 152, as well as Local Law 150, fall within the jurisdiction of the New York City Department of Buildings (DOB). DOB is currently in the process of developing requirements related to LL 152 and LL 150. Therefore, at the time of this application, the Foundation cannot guarantee this membership will be in full compliance if DOB decides to mandate additional experience and/or training requirements falling outside the components of the GOQ membership.

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- B. “CT87” means Covered Task 87, Conducting Interior Jurisdictional Piping Construction and Maintenance Activities, developed by NGA in collaboration with and approved by Utilities, fully compliant with Utility operating procedures and applicable requirements of 49 CFR 192 for constructing interior jurisdictional piping and appurtenances and making connections of de-energized piping to energized, isolated and secured service piping.
- C. “D&A Database” means a software platform containing the drug and alcohol testing records of participating members, which shall be maintained as appropriate and agreed to by the Foundation and the D&A Provider.
- D. “D&A Pool” means a group of participating members who meet baseline drug and alcohol testing requirements and together create a consortium from which participating members are randomly tested pursuant to the requirements described in the USDOT-approved D&A Testing Program.
- E. “D&A Pool Representative” means the Foundation’s role in representing the D&A Pool.
- F. “D&A Provider” means a third-party USDOT-approved drug and alcohol testing program provider.
- G. “NGA OQ Database” means the electronic software platform containing the data related to the operator qualification and training program completion status of participating members, which shall be accessible by NGA, and as appropriate and agreed to, by the Foundation, approved designated training providers, the Utilities, and local, state and federal regulators. This OQ database is currently hosted by Industrial Training Services (ITS) on behalf of NGA.
- H. “USDOT Jurisdictional gas piping” means the visibly accessible interior building piping, fittings, and appurtenances from the point-of-entry through the outlet of the meter.
- I. “Member employer” means a New York City-licensed plumbing firm that applies to the Foundation and becomes a Gas Operator Qualification Member and which employs (a) participating member(s).
- J. “Participating member” means a plumbing technician, who is employed by a New York City-licensed plumbing firm that is a member employer, and who also meets both the training and testing qualifications as set forth herein, including (i) meeting baseline drug and alcohol testing requirements and (ii) receiving, or scheduled to receive training, and passing, or scheduled to take such exams relevant to CT86 and/or CT87;
- K. “OQ Administrator” means the Foundation’s dual role as the D&A Pool Representative and the OQ Representative. As OQ Administrator, the Foundation shall collect any fees relevant to this membership;
- L. “OQ Representative” means the Foundation acting as a center point of contact for data related to the training, evaluation, and OQ status of participating members.
- M. “Utilities” means National Grid and Consolidated Edison.

III. Understandings. The Foundation and all GOQ Members understand the roles in furtherance of the Purpose as set forth in the Memorandum as follows:

- A. The Foundation is a tax-exempt, not-for-profit organization authorized under the federal Internal Revenue Code (pursuant to 26 U.S.C. § 501(c)(6)) with its primary

purpose to ensure the public health through the enactment and enforcement of safe plumbing codes.

- B. To assist the plumbing industry with the changes as described herein related to USDOT jurisdictional gas piping, as an ancillary purpose the Foundation shall serve as OQ Administrator and shall enter into agreements with appropriate organizations, such as NGA and D&A Provider, to provide services on behalf of the participating members. This will ensure the industry's implementation of the changes for inspections and maintenance of USDOT jurisdictional gas piping is efficient. This will also ensure safety of such USDOT jurisdictional gas piping. The services offered by the Foundation shall be administered as follows:

1. It is the Parties' understanding with regard to the Foundation acting as D&A Pool Representative:

- i. It is the Parties' understanding that the Foundation shall contract with a D&A Provider and act as a fee collector² and as a consortium representative for purposes of creating the D&A Pool;
- ii. It is the Parties' understanding that the drug and alcohol testing plan will be managed and developed by Member employer (see attached template, Attachment B) and approved by the D&A Provider, and any relevant training will be administered by the D&A Provider;
- iii. It is the Parties' understanding that the D&A Provider serves as the program medical review officer ("MRO") for the drug and alcohol testing program and that the D&A Provider is responsible for all communication with Member employers and Participating members for test scheduling as well as record-keeping of results. The D&A Provider will maintain drug test results in the D&A Database, which will be accessible by the Member Employer's designated employer representative ("DER") and the Foundation; **please complete Attachment D and return with application;**
- iv. It is the Parties' understanding that the Foundation shall only act as the D&A Pool Representative, but in no way is responsible for accuracy of the information entered into the D&A Database related to participating members' drug and alcohol testing data and is not responsible for the reporting and compliance with PHMSA;
- v. It is the Parties' understanding that by applying to this membership program with the Foundation, all member employers are agreeing to obtain signed, written consent from all participating members regarding their drug and alcohol test results being shared with member employers (through employer's DER) and the Foundation, and that the Utilities and NGA will have access to the status of the drug and alcohol qualification (i.e. YES or NO as to whether a participating member is qualified; such signed, written consent as referred to in this paragraph shall include the following:

² Except for fees associated with post-accident / reasonable suspicion testing which will be billed directly by D&A Provider to member employer.

I HEREBY ACKNOWLEDGE THAT I HAVE RECEIVED A COPY ["COMPANYS"]'S ALCOHOL MISUSE AND CONTROLLED SUBSTANCE ABUSE PREVENTION PLAN. I AM AWARE THAT THIS PLAN AND THE COMPANY'S DRUG AND ALCOHOL POLICY OUTLINE THE PROCEDURES CONCERNING ALCOHOL AND CONTROLLED SUBSTANCE REQUIRED BY THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION, AND MORE SPECIFICALLY FOR COMPLIANCE WITH RECENT CHANGES TO THE NEW YORK CODES, RULES, AND REGULATIONS BY THE NEW YORK STATE PUBLIC SERVICE COMMISSION (SPECIFICALLY, IN CASE NO. 14-G-0357, THE NEW YORK STATE PUBLIC SERVICE COMMISSION ["PSC"] PROPOSED A CHANGE TO THE DEFINITION OF "SERVICE LINE" WHICH WILL REQUIRE LMPS AND/OR THOSE WITHIN THEIR EMPLOY TO CONDUCT INTERIOR NATURAL GAS DISTRIBUTION JURISDICTIONAL PIPING SAFETY INSPECTIONS AND LEAK SURVEYS IN ACCORDANCE WITH ALL LOCAL, STATE, AND FEDERAL REQUIREMENTS, POTENTIALLY INCLUDING NEW YORK CITY LOCAL LAW 2016-152, STATE AND FEDERAL PIPELINE SAFETY RULES SPECIFIED IN 16 NYCRR PART 255 AND 49 CFR PART 192, AND JURISDICTIONAL UTILITY OPERATOR PROCEDURES. THESE CHANGES REQUIRE LMPS AND/OR THOSE WITHIN THEIR EMPLOY TO TAKE A COURSE AND EXAMINATION RELEVANT TO THE OPERATOR QUALIFICATION TASKS DESCRIBED HEREIN AND REQUIRE LMPS AND/OR THOSE WITHIN THEIR EMPLOY TO TAKE A BASELINE DRUG AND ALCOHOL TEST AND BE SUBJECT TO RANDOM AND REASONABLE SUSPICION DRUG AND ALCOHOL TESTING IN COMPLIANCE WITH THE PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION). IN ADDITION, I AGREE AND CONSENT TO MY ALCOHOL AND DRUG TEST RESULTS PURSUANT TO THE OPERATOR QUALIFICATION MEMBERSHIP WITH THE PLUMBING FOUNDATION CITY OF NEW YORK, INC. AS DESCRIBED IN THIS PLAN TO BE RELEASED TO MY COMPANY'S DESIGNATED EMPLOYER REPRESENTATIVE, THE PLUMBING FOUNDATION CITY OF NEW YORK, INC., AND MY STATUS IN THE D&A POOL TO BE RELEASED TO THE UTILITY COMPANY (E.G. NATIONAL GRID OR CONSOLIDATED EDISON) WHEN I AM ENGAGED IN COVERED WORK, AND AS OTHERWISE REQUIRED BY LAW. THE DRUG AND ALCOHOL TESTING PROVIDER IN CONTRACT WITH THE PLUMBING FOUNDATION CITY OF NEW YORK, INC. SHALL HAVE THE AUTHORITY TO RELEASE SUCH TEST RESULTS TO THE PLUMBING FOUNDATION, AGENTS OR

OFFICIALS OF THE USDOT, OSHA, OR ANY NEW YORK STATE OR NEW YORK CITY GOVERNMENTAL OR REGULATORY AGENCY WITH REGULATORY AUTHORITY, AND SHALL HAVE AUTHORITY TO RELEASE SUCH TEST RESULTS OR RELATED INFORMATION TO COMPLY WITH REQUESTS RESULTING FROM A LEGAL ACTION, INCLUDING BUT NOT LIMITED TO UNEMPLOYMENT HEARING, WORKER'S COMPENSATION HEARINGS, OR OTHER LEGAL HEARINGS, WHEN INITIATED BY THE TESTED INDIVIDUAL.

- vi. The Foundation has provided a **sample** template for a drug and alcohol plan that **Member Employers must provide to all participating members** as part of the drug and alcohol testing program (Attachment B). This is a **sample** provided for by the Foundation, but the Member Employer is ultimately responsible for compliance with PHMSA regulations, including any requirement to have in place an Employee Assistance Program, and for obtaining written consent from participating members that this plan was distributed to them.
2. It is the Parties' understanding with regard to the Foundation acting as OQ Representative:
 - i. The Foundation shall assist the participating members and member employers in obtaining the required training and examinations by working with NGA, authorized instructors, and approved testing facilities to provide the required 7-hour core skills training program lesson plan and instruction modules focused on CT86 & CT87, which shall be offered by authorized instructors to participating members of member employers;
 - ii. The Foundation shall assist the participating members and member employers in obtaining the required training and examinations by working with approved testing facilities to schedule the written and practical examinations for CT86 & CT87; the Foundation shall only assist participating members in scheduling the required examinations for CT86 & CT87 upon receipt of a letter from authorized instructor that such participating member(s) completed the required training; all participating members passing both examinations shall be issued an OQ ("operator qualified") photographed and barcoded identification card (QR Card) and such cards will also include D&A credentialed information;
 - iii. It is the Parties' understanding that the Foundation shall only act as the OQ Representative, but in no way is responsible for accuracy of the information entered into the NGA OQ Database related to participating members' operator qualification status and is not responsible for reporting and compliance purposes.

IV. Limitation of Liability. Under no circumstances is the Foundation responsible for reporting to any governmental or regulatory body, any information relating to OQ or D&A testing program compliance, regardless of whether the Foundation has access to such

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information, including but not limited to information regarding a participating member's operator qualification status, and/or a participating member's drug and alcohol test results. This shall only be effective unless and until any such regulatory body passes a law, rule, or policy to the contrary. The Parties agree that the Foundation is not the controlling party for purposes of the accuracy of any information associated with the OQ status or D&A status of participating members. The Foundation is not the controlling party for purposes of such information if audited or subpoenaed by any third-party, including any law enforcement entity or tribunal, and that the Foundation cannot be held liable to any participating member or member employer for any reason relating to a participating member's operator qualification status and/or a participating member's drug and alcohol test results. The Parties agree that the Foundation's role is limited to that of OQ Administrator, and that the Foundation has no authority or control over any participating member or member employer. Finally, member employers shall reimburse, indemnify and hold harmless the Foundation for any claims, suits, judgments, expenses, losses, damages, liabilities, demands, charges or causes of action of any kind or nature whatsoever (including without limitation any reasonable legal fees, expenses and costs) based upon, arising out of or resulting from any claim of any member employer's employee or third party for alleged liabilities or obligations of the Foundation relating to or arising under this Agreement.

V. Term. This Memorandum shall remain in effect as long as a GOQ Membership is valid with the Foundation. If a member employer fails to properly pay an invoice for services related to its membership within 30 days of the date of the invoice, the Foundation has the authority to terminate the membership. The Foundation shall have the sole authority to choose whether to extend the due date of any outstanding fees in order to continue allowing such member employer to be represented by the Foundation for D&A and OQ purposes. **If the Foundation terminates membership with any member employer, then any such participating members employed by such member employer will no longer have valid OQ status. Member employers and their participating members cannot hold the Foundation liable for any reason, including for any claim from a participating member related to his/her OQ status, when such member employer's membership is terminated for reasons pursuant to this paragraph.**

VI. Meetings. To accomplish the Purpose of the Memorandum, GOQ Members may be invited to an annual meeting by the Foundation to be held at the discretion of the Foundation.

VII. Financial Considerations. The financial costs associated with the GOQ Membership and the resulting services provided for such membership are in no way the primary purpose of or primary source of revenue for the Foundation, but rather the GOQ Membership offered by the Foundation is an ancillary option offered to members and non-members alike for purposes described herein. The Foundation shall not use the funds for any purpose unrelated to its role as OQ Administrator. In no way shall the Foundation's services provided herein be treated as business activities for-profit. In addition, the Foundation will not allow for any refund of membership fees as set in the fee schedule in attached Application unless a participating member fails the baseline drug and alcohol test and member employer requests a refund of participant dues above the cost of the drug and alcohol test.

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VIII. Assignment. Neither party may assign or transfer their respective rights, responsibilities, or agreements made herein without the prior written consent of both parties, approval for which shall not be unreasonably held.

IX. Addendum. The Foundation reserves the right to issue future addendums to this Memorandum, and if a GOQ Member disagrees with any future addendum, it may choose to terminate its membership with 30 days written notice. Further, if a contract between the Foundation and a D&A Provider expires and a new contract is entered into between the Foundation and a D&A Provider, that in no way constitutes a termination of this Memorandum. Nothing in this Memorandum, however, shall be interpreted to require that the Foundation have or hold a contract with a D&A Provider, but if any changes are made Notice is required pursuant to Section X.

X. Notice. The Foundation, either directly or through agreement with the D&A Provider, shall give all GOQ Members notice within 30 days after the Foundation's contract with a D&A Provider has expired and/or a new contract has been signed.

XI. Arbitration. This Memorandum shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to the principles of conflicts of law thereof. Paragraph headings are for convenience only and shall not be considered a part of the terms and provisions of this Memorandum. The exclusive procedure for resolution of any and all disputes arising out of or relating to the interpretation or application of this Memorandum shall be binding arbitration in New York, New York, under then existing employment dispute resolution rules of the American Arbitration Association ("AAA"), whether the claim is legal or equitable in nature, and whether it is based on tort, contract, statutory, or common law, including without limitation disputes based on federal, state, or local civil rights laws or laws pertaining to employment discrimination. Subject to applicable law, the Parties agree that the decision of the arbitrator shall be final and binding upon the Parties and shall be enforceable in courts of proper jurisdiction.

XII. Severability. If any provision of this Memorandum is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

XIII. Prior Agreements. This Memorandum, the accompanying signed Application, and all required Attachments as part of such Application constitute the entire agreement between the Parties relating to the Purpose as set forth herein, and supersedes all prior or simultaneous discussions, materials, or negotiations, whether written or oral.