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Service Agreement No. 2324

COST REIMBURSEMENT AGREEMENT

This **COST REIMBURSEMENT AGREEMENT** (the "Agreement"), is made and entered into as of November 18, 2016 (the "Effective Date"), by and between **ERIE BOULEVARD HYDROPOWER, L.P.**, having an office and place of business at 800 Starbuck Avenue, Suite 802, Watertown, NY 13601 ("Customer") and **NIAGARA MOHAWK POWER CORPORATION** d/b/a National Grid, a corporation organized and existing under the laws of the State of New York, having an office and place of business at 300 Erie Boulevard West, Syracuse, New York 13202 (the "Company"). Customer and Company may be referred to hereunder, individually, as a "Party" or, collectively, as the "Parties".

WITNESSETH

WHEREAS, Customer has requested that Company perform certain work, as more specifically described below; and

WHEREAS, Company and Customer are parties to that certain Interconnection Agreement dated as of February 4, 1999 (the "Interconnection Agreement") and that certain Site Agreement entered into on February 4, 1999 (the "Site Agreement") pertaining to the Site (as such term is define below) and the collocation of certain Company facilities at the Site; and

WHEREAS, Customer is proposing to utilize portions, or otherwise potentially provide for the relocation of certain portions, of a certain electric sub-station property and 23 kV Right-of-Way identified as the "Heuvelton Substation Easement" (the "Subject Easement Areas") and reserved by Company, in that Bargain and Sale Deed with Lien Covenant, dated July 30, 1999, conveyed to Customer and recorded as Instrument ID #1999-00015616 in the St. Lawrence County Clerk's Office (the "Bargain and Sale Deed"), in order to facilitate its development of a new fish passage as directed by FERC License 2713, issued 11/26/2012 (the "Fish Passage Project"); and

WHEREAS, Company is willing to perform the Company Work as contemplated in this Agreement, subject to (i) reimbursement by Customer of all Company costs and expenses incurred in connection therewith, (ii) if applicable, Customer's acquisition and delivery of certain modified real property interests as contemplated in this Agreement, (iii) Customer's performance of all other duties, responsibilities, and obligations set forth in this Agreement, including, without limitation, the Customer Required Actions (as defined below); and (iv) receipt of any and all "Required Approvals", as set forth in Section 18.1, in a form acceptable to Company;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

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1.0 Certain Definitions

Wherever used in this Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

“Affiliate” means any person or entity controlling, controlled by, or under common control with, any other person or entity; “control” of a person or entity shall mean the ownership of, with right to vote, 50% or more of the outstanding voting securities, equity, membership interests, or equivalent, of such person or entity.

“Agreement” means this Cost Reimbursement Agreement, including all annexes, appendices, attachments, schedules, and exhibits and any subsequent written amendments or modifications thereto, as may be mutually agreed to and executed by the Parties.

“Applicable Requirements” shall mean all applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction, NYISO, NYSRC and NPCC requirements, and any applicable reliability standards.

“Balance Amount” shall have the meaning set forth in Section 8.1 of this Agreement.

“Bargain and Sale Deed” shall have the meaning set forth in the preamble to this Agreement.

“Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.

“CEI” shall have the meaning set forth in Section 25.4 of this Agreement.

“CIP” shall have the meaning set forth in Section 25.4 of this Agreement.

“Company” shall have the meaning set forth in the preamble to this Agreement.

“Company Indemnified Party” and “Company Indemnified Parties” shall have the meanings set forth in Section 12.1 of this Agreement.

“Company Reimbursable Costs” means the actual costs and expenses incurred by Company and/or its Affiliates in connection with performance of the Company Work or otherwise incurred by Company and/or its Affiliates in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company and/or its Affiliates prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation,

internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Company Work or otherwise in connection with the Project, all applicable overhead, overtime costs, all federal, state and local taxes incurred (including, without

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limitation, all taxes arising from amounts paid to Company that are deemed to be contributions in aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required permits, rights, consents, releases, approvals, or authorizations acquired by or on behalf of Company, including, without limitation, the Required Approvals.

“Company Work” means all duties, responsibilities, and obligations to be performed by Company as contemplated by Section 3.1 of this Agreement.

“Construction Commencement Notice” shall mean a written notice executed by a duly authorized representative of Customer requesting or directing that the Company commence construction in connection with the Company Work, such notice to be without condition or qualification.

“Customer” shall have the meaning set forth in the preamble to this Agreement.

“Customer Grant of Easement” shall have the meaning set forth in Exhibit C to this Agreement.

“Customer Indemnified Party” and “Customer Indemnified Parties” shall have the meanings set forth in Section 12.1 of this Agreement.

“Customer Required Actions” means all duties, responsibilities, and obligations to be performed by Customer as contemplated by Section 3.3 of this Agreement.

“Damages” shall have the meaning set forth in Section 12.1 of this Agreement.

“Day” means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

“Disclosing Party” shall mean the Party disclosing Proprietary Information.

“Dollars” and “\$” mean United States of America dollars.

“Effective Date” shall have the meaning specified in the preamble of this Agreement.

“Environment” shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

“Environmental Due Diligence Procedure” is set forth in Schedule II to this Agreement.

“Environmental Law” shall mean any environmental or health-and-safety-related law, regulation, rule, ordinance, or by-law at the federal, state, or local level, whether existing as of

the Effective Date, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

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“Existing Facilities” means existing Company equipment and/or facilities located at or near Heuvelton Substation, requiring removal for the Fish Passage Project.

“Existing Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“Facilities Approvals” shall mean the New Facilities Approvals and the Existing Facilities Approvals.

“FERC” shall mean the Federal Energy Regulatory Commission.

“FERC Approval Date” shall mean the date as of which FERC grants approval of this Agreement without condition or modification.

“Fish Passage Project” shall have the meaning set forth in the preamble to this Agreement.

“Force Majeure Event” shall have the meaning set forth in Section 23.1 of this Agreement.

“Good Utility Practice” means any of the practices, methods, and acts 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 refer to acceptable practices, methods, or acts generally accepted in the region in which the Fish Passage Project is located during the relevant time period. Good Utility Practice shall include, but not be limited to, NERC, NPCC and NYISO, NYSRC criteria, rules, guidelines, and standards, where applicable, and as they may be amended from time to time, including the rules, guidelines, and criteria of any successor organization to the foregoing entities. When applied to Customer, the term Good Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

“Hazardous Substances” means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

“Indemnified Party” shall mean a Company Indemnified Party and/or a Customer Indemnified Party, as applicable.

“Initial Prepayment” shall have the meaning set forth in Section 7.2 of this Agreement.

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“Interconnection Agreement” shall have the mean specified in the preamble to this Agreement.

“Land Use Approvals” shall have the meaning set forth in Exhibit C to this Agreement.

“NERC” shall mean the North American Electric Reliability Corporation or any successor organization.

“New Facilities” means the personal property assets constituting new or modified facilities to be constructed and placed in service by Company as contemplated this by this Agreement.

“New Facilities Approvals” shall have the meaning set forth in Exhibit A to this Agreement.

“New Facilities Property Rights” shall have the meaning set forth in Exhibit C of this Agreement.

“Non-Breaching Party” shall have the meaning set forth in Section 21.1 of this Agreement.

“Non-Disclosure Term” shall have the meaning set forth in Section 25.3.4 of this Agreement.

“NPCC” shall mean the Northeast Power Coordinating Council, Inc. (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

“NYISO” shall mean the New York Independent System Operator, Inc. or any successor organization thereto.

“NYPSC” shall mean the New York Public Service Commission.

“NYSRC” shall mean the New York State Reliability Council or any successor organization thereto.

“Party” and “Parties” shall have the meanings set forth in the preamble to this Agreement.

“Preliminary Milestone Schedule” shall have the meaning set forth in Section 5.2 of this Agreement.

“Project” means the Company Work.

“Project Manager” means the respective representatives of each of the Customer and Company appointed pursuant to Section 10.1 of this Agreement.

“Proprietary Information” means (i) all financial, technical and other non-public or

proprietary information which is furnished or disclosed by the Disclosing Party or its Affiliates (or its or its Affiliates' agents, servants, contractors, representatives, or employees) to the Receiving Party or its Representative(s) in connection with this Agreement and that is

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described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed, (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of Company or any third party), (iii) all CEII and CIP and (iv) all memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived from any information described in subparts (i) through (iii) preceding.

“Receiving Party” shall mean the Party receiving Proprietary Information.

“Refund Amount” shall have the meaning set forth in Section 8.1 of this Agreement.

“Release” shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

“Representatives” shall, for the purposes of Article 25 of this Agreement, mean the Affiliates of a Party and such Party’s and its Affiliates’ officers, directors, employees, contractors, counsel and representatives.

“Required Approvals” shall have the meaning set forth in Section 18.1 of this Agreement.

“Resources” shall have the meaning set forth in Section 23.1 of this Agreement.

“Site” shall mean the location of the hydroelectric facility commonly known as the Heuvelton Hydro Station.

“Site Agreement” shall have the meaning set forth in the preamble to this Agreement.

“Subject Easement Areas” shall have the meaning set forth in the preamble to this Agreement.

“Threat of Release” shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

“Total Payments Made” shall have the meaning set forth in Section 8.1 of this Agreement.

“Work” shall mean the Customer Required Actions and/or the Company Work, as applicable.

“Work Commencement Notice” shall mean a written notice executed by a duly authorized representative of Customer requesting or directing that the Company begin performance of the Company Work, such notice to be without condition or qualification.

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2.0 Term

2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until performance has been completed hereunder, or until terminated in accordance with the terms of this Agreement, whichever occurs first, provided, however, that this Agreement shall not expire or terminate until all amounts due and owing hereunder have been paid in full as contemplated by this Agreement.

3.0 Scope of Work

3.1 The Company's scope of work is set forth in Exhibit A of this Agreement, attached hereto and incorporated herein by reference (the "Company Work").

3.2 The Company shall use commercially reasonable efforts to perform the Company Work in accordance with Good Utility Practice. Prior to the expiration of one (1) year following completion of the Company Work, Customer shall have the right to notify the Company in writing of the need for correction of defective Company Work that does not meet the standard of this Section 3.2. If the Company Work is defective within the meaning of the prior sentence, the Company shall promptly correct, repair or replace such defective Company Work, as appropriate, provided, that, Company shall not have any obligation to correct, repair or replace such defective Company Work unless the defect in the Company Work has (or is reasonably likely to have) a material adverse impact on the Customer's implementation of the Fish Passage Project as contemplated by the Parties as of the Effective Date. The remedy set forth in this Section is the sole and exclusive remedy granted or available to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

3.3 Subject to the terms of this Agreement, Customer shall use reasonable efforts to perform the actions described in Exhibit C attached to this Agreement (the "Customer Required Actions"). All of the Customer Required Actions shall be performed at Customer's sole cost and expense.

3.4 Each Party shall reasonably cooperate and coordinate with the other Party, and with such other Party's contractors, subcontractors and representatives, as needed to facilitate the Work.

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4.0 Changes in the Work

- 4.1 Subject to Section 4.2, below, (a) any requests for material additions, modifications, or changes to the Work shall be communicated in writing by the Party making the request, and (b) if the Parties mutually agree to such addition, modification, or change to the applicable Work, such agreement shall be set forth in a written document signed by both Parties specifying such addition, modification or change. Any additional costs arising from such addition, modification or change to the Work shall be paid by Customer as part of Company Reimbursable Costs.
- 4.2 The foregoing notwithstanding, the Company is not required to obtain the consent or agreement of the Customer for, or (unless required by the last sentence of this Section) provide any notice to Customer of, any change to the Company Work if such change (a) will not materially interfere with Customer's ability to implement the Fish Passage Project as contemplated by the Parties as of the Effective Date, or (b) is made in order to comply with any Applicable Requirement(s), Good Utility Practice, the Company's applicable standards, specifications, requirements and practices, or to enable Company's utility facilities to continue, commence or recommence commercial operations in accordance with all applicable legal and regulatory requirements and all applicable codes and standards. Any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs. The Company shall provide written notice to the Customer of any change made pursuant to this Section 4.2 that the Company estimates, in good faith at the time such change is initiated, will increase the total Company Reimbursable Costs payable under this Agreement by an amount exceeding twenty percent (20%) of the Initial Prepayment.

5.0 Performance and Preliminary Milestone Schedule; Conditions to Proceed

- 5.1 The Company shall use reasonable efforts to attempt to have any Company Work performed by its direct employees performed during normal working hours. The foregoing notwithstanding, if Company Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs, as part of Company Reimbursable Costs. For the avoidance of doubt: in no event shall the Company be obligated or required to perform Company Work outside of normal working hours if the Company determines, in its sole discretion, that such performance would be unreasonable, unsafe or otherwise not in compliance with Good Utility Practice.
- 5.2 The preliminary project milestone schedule for the Fish Passage Project is set forth in Exhibit B, attached hereto and incorporated herein by reference ("Preliminary Milestone Schedule"). The Preliminary Milestone Schedule is a

projection only and is subject to change with or without a written adjustment to such Schedule. Neither Party shall be liable for failure to meet the Preliminary

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Milestone Schedule, any milestone, or any other projected or preliminary schedule in connection with this Agreement or the Project.

5.3 Commencement of Company Work. Company will proceed with the Company Work following the later of (i) the FERC Approval Date, (ii) Company's receipt of the Initial Prepayment, and (iii) Company's receipt of the Work Commencement Notice from Customer.

5.4 Construction Commencement. Anything in this Agreement to the contrary notwithstanding, Company shall not be obligated to proceed with any construction in connection with the Company Work unless and until all of the following conditions have been satisfied:

- (i) Customer has delivered, or arranged to deliver, and Company has received, all real property rights necessary for Company to complete the Company Work, including, without limitation, the New Facilities Property Rights,
- (ii) all Required Approvals for the Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties, have become final and non-appealable and commencement of such construction is permitted under the terms and conditions of such Required Approvals,
- (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company, and
- (iv) Company has received the Construction Commencement Notice from Customer.

5.5 Decommissioning Commencement. Company shall not be obligated to proceed with de-energizing, decommissioning or removing the Existing Facilities unless and until all of the following conditions have been satisfied:

- (i) the New Facilities have been completed, energized and placed in commercial operation by the Company,
- (ii) all Required Approvals for the Work (including, without limitation, the New Facilities Approvals, the Existing Facilities Approvals and the Land Use Approvals) have been received, are in form and substance satisfactory to the Parties and have become final and non-appealable, and
- (iii) all Company Reimbursable Costs invoiced to date have been paid in full to Company.

6.0 **[Reserved]**

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7.0 **Customer Obligation to Pay Company Reimbursable Costs; Additional Prepayments; Invoicing; Taxes**

- 7.1 Customer shall pay or reimburse Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates. Any estimates provided under or in connection with this Agreement or the Company Work (including, without limitation, the Initial Prepayment) shall not limit Customer's obligation to pay Company for all Company Reimbursable Costs actually incurred by Company and/or its Affiliates.
- 7.2 Once the FERC Approval Date has occurred, Customer shall provide Company with a prepayment of **\$45,000** ("*Initial Prepayment*"), such amount representing Company's current estimate of the Company Reimbursable Costs to perform the Company Work. The Company shall invoice Customer for the Initial Prepayment; Customer shall pay such amount to Company within thirty-five (35) Days of the invoice date. Unless it elects to do so in its sole discretion, Company shall not be obligated to commence any Company Work under this Agreement prior to Company's receipt of the Initial Prepayment.
- 7.3 Company may invoice Customer, from time to time, for unpaid Company Reimbursable Costs incurred and/or may elect, in its sole discretion, to continue performance hereunder after the depletion of any prepayments and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty-five (35) Days from date of invoice. If any payment due to Company under this Agreement is not made when due, Customer shall pay Company interest on the unpaid amount in accordance with Section 9.1 of this Agreement. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement (including, without limitation, any Additional Prepayment) is not received within five (5) Days after the applicable invoice due date, Company may suspend any or all Work pending receipt of all amounts due from Customer; any such suspension shall be without recourse or liability to Company. The foregoing notwithstanding, if the unpaid invoiced amount is being disputed in good faith by Customer and Customer has provided written notice thereof to Company, Company shall not be entitled to suspend Work hereunder for non-payment of such disputed amount unless the aggregate amount of all unpaid invoiced amounts due from Customer under this Agreement at the time of such suspension (inclusive of such disputed amount) exceeds ten percent (10%) of the Initial Prepayment.
- 7.4 If Customer claims exemption from sales tax, Customer agrees to provide

Company with an appropriate, current and valid tax exemption certificate, in form and substance satisfactory to the Company, relieving the Company from any obligation to collect sales taxes from Customer ("Sales Tax Exemption Certificate"). During the term of this Agreement, Customer shall promptly

provide the Company with any modifications, revisions or updates to the Sales Tax Exemption Certificate or to Customer's exemption status. If Customer fails to provide an acceptable Sales Tax Exemption Certificate for a particular transaction, the Company shall add the sales tax to the applicable invoice to be paid by Customer.

- 7.5 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate, from time to time, by written notice to the Company:

Brookfield Renewable Energy Group
c/o Erie Boulevard Hydropower, L.P.
800 Starbuck Avenue, Suite 802
Watertown, NY 13601

- 7.6 All payments made under this Agreement shall be made in immediately available funds.

Unless otherwise directed by the Company, payments to the Company shall be made by wire transfer to:

Wire Payment: JP Morgan Chase
ABA#: 021000021
Credit: National Grid USA
Account#.77149642

Unless otherwise directed by Customer, payments to Customer shall be made by wire transfer to:

Bank: HSBC Bank USA, N.A.
ABA#: 021001088
Credit: Erie Boulevard Hydropower, L.P.
Account #: 000256552

8.0 **Final Payment**

- 8.1 Within one hundred and eighty (180) Days following the earlier of (i) the Existing Facilities Removal Date, and (ii) the effective early termination or cancellation date of this Agreement in accordance with any of the provisions hereof, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("*Total Payments Made*"). If the total of all

Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "Balance Amount"). If the Total Payments

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Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer (“*Refund Amount*”) The Refund Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Refund Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant to Section 9.1 of this Agreement.

9.0 **Interest on Overdue Amounts**

9.1 If any payment due under this Agreement is not made when due, the Party obligated to make such payment shall pay to the other Party interest on the unpaid amount calculated in accordance with Section 35.19a of the FERC’s regulations (18 C.F.R. 35.19a) from and including the due date until payment is made in full.

10.0 **Project Managers; Meetings**

10.1 Promptly following the Effective Date, each Party shall designate a Project Manager responsible for coordinating the Party’s Work and shall provide the other Party with a written notice containing the name and contact information of such Project Manager (“*Project Manager*”). In no event shall any Project Manager be authorized to amend or modify the provisions of this Agreement. Each Party may change its Project Manager, from time to time, by written notice to the other Party.

10.2 Each Party’s Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

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11.0 **Disclaimer of Warranties, Representations and Guarantees**

11.1 CUSTOMER ACKNOWLEDGES THAT THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN, ENGINEERING OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS CONTAINED IN THIS AGREEMENT IS AS SET FORTH IN SECTION 3.2. COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THIS AGREEMENT, THE EXISTING FACILITIES, THE NEW FACILITIES, THE FISH PASSAGE PROJECT, OR ANY COMPANY WORK, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

12.0 **Liability and Indemnification**

12.1 (a) To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, a "Company Indemnified Party" and, collectively, the "Company Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, for economic damage, and for claims brought by third parties for personal injury, property damage or other damages ("Damages"), incurred by any Company Indemnified Party to the extent arising out of or in connection with this Agreement, the Fish Passage Project, or any Work, except to the extent such Damages are attributable to (x) the negligence, intentional misconduct, breach of this Agreement or unlawful act of a Company Indemnified Party as determined by

a court of competent jurisdiction, or (y) the subject matter of Customer's indemnity set forth in Section 19.1 of this Agreement.

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- (b) To the fullest extent permitted by applicable law (including, without limitation, the applicable provisions of any governing federal or state tariff), Company shall indemnify and hold harmless, and at Customer's option, defend Customer, its parents and Affiliates and their respective officers, directors, members, managers, partners, employees, servants, agents, contractors and representatives (each, individually, a "Customer Indemnified Party" and, collectively, the "Customer Indemnified Parties"), from and against any and all Damages incurred by any Customer Indemnified Party to the extent such Damages are attributable to the negligence, intentional misconduct, or unlawful act of a Company Indemnified Party in connection with this Agreement, the Fish Passage Project, the Project, or any Company Work as determined by a court of competent jurisdiction, except to the extent such Damages are attributable to the negligence, intentional misconduct, breach of this Agreement or unlawful act of a Customer Indemnified Party as determined by a court of competent jurisdiction.
- 12.2 Without limiting the foregoing, Customer shall defend, indemnify and save harmless the Company Indemnified Parties from any and all Damages resulting from (i) any charge or encumbrance in the nature of a laborer's, mechanic's or materialman's lien asserted by any of Customer's contractors, subcontractors or suppliers in connection with any Work or the Fish Passage Project, or (ii) any claim of trespass, or other third party cause of action arising from or are related to reliance upon or use of the New Facilities Property Rights by the Company or any other Indemnified Parties for the purposes contemplated herein.
- 12.3 Without limiting the foregoing, Customer shall protect, indemnify and hold harmless the Company and its Affiliates from and against the cost consequences of any tax liability imposed against or on Company and/or its Affiliates (including, without limitation, the costs consequences of any tax liabilities resulting from a change in applicable law or from an audit determination by the IRS) as the result of or attributable to payments, and/or real or personal property transfers, made in connection with this Agreement, as well as any related interest and penalties, other than interest and penalties attributable to any delay directly caused by Company or the applicable Company Affiliate.
- 12.4 To the fullest extent permitted by applicable law, the Company's total cumulative liability for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement, the Project or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer as Company Reimbursable Costs under this Agreement.

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- 12.5 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorneys' fees or litigation costs) in connection with or related to this Agreement, including, without limitation, damage claims based on causes of action for breach of contract, tort (including negligence), or any other theory of recovery, whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.
- 12.6 Subject to the obligations set forth in Sections 12.1 through 12.3, neither Party shall be liable to the other Party for claims or damages in connection with or related to this Agreement for lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.
- 12.7 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or of any third party (other than a subcontractor of the Party that is unable or failing to perform hereunder).

For the avoidance of doubt: Company shall have no responsibility or liability under this Agreement for any delay in performance or nonperformance to the extent such delay in performance or nonperformance is caused by or as a result of (a) the inability or failure of Customer or its contractors to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by Customer under this Agreement (including, without limitation, the Customer Required Actions), (b) any unforeseen conditions or occurrences beyond the reasonable control of Company (including, without limitation, conditions of or at the site(s) where Work is or will be performed, delays in shipments of materials and equipment and the unavailability of materials), (c) the inability or failure of Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement, (d) any valid order or ruling by any governmental agency or authority having jurisdiction over the subject matter of this Agreement, or (e) suspension of Work during peak demand periods or such other times as may be reasonably required to minimize or avoid risks to utility system reliability in accordance with Good Utility Practice.

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- 12.8 Anything in this Agreement to the contrary notwithstanding, if any Party's liability in connection with this Agreement is limited or capped pursuant to any applicable law, statute, rule or regulation, then the other Party hereto shall be entitled to elect an identical liability limitation and/or cap as if such law, statute, rule or regulation were applicable to such Party. The obligations under this Article shall not be limited in any way by any limitation on Customer's insurance.
- 12.9 Notwithstanding any other provision of this Agreement, this Article shall survive the termination, cancellation, completion or expiration of this Agreement.

13.0 **Insurance; Employee and Contractor Claims**

- 13.1 Prior to the commencement of any Company Work and during the term of the Agreement, the Company, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or the Company may elect to self-insure one or more of the insurance coverage amounts set forth in Exhibit D of this Agreement.
- 13.2 Prior to the commencement of any Work on the Fish Passage Project and during the term of the Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Exhibit D of this Agreement, or Customer may elect to self-insure one or more of such coverage amounts to the extent authorized or licensed to do so under the applicable laws of the State of New York, provided, that, the Customer provides written notice of any such election to the Company prior to the commencement of any Work under this Agreement.
- 13.3 Unless the Customer elects to self-insure in accordance with Section 13.2 hereof, the Customer shall have its insurer furnish to the Company certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article, such certificates to be provided prior to the commencement of any Work under this Agreement.
- 13.4 Each Party shall be separately responsible for insuring its own property and operations.
- 13.5 Anything in this Agreement to the contrary notwithstanding, each Party shall be solely responsible for the claims of its respective employees and contractors against such Party and shall release, defend, and indemnify the other Party, its Affiliates, and their respective officers, directors, employees, and representatives, from and against such claims. Notwithstanding any other provision of this Agreement, this Section shall survive the termination, cancellation, completion or expiration of this Agreement.

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14.0 **Assignment and Subcontracting**

14.1 The Company may assign this Agreement, or any part thereof, to any of its Affiliates provided such assignee Affiliate agrees in writing to be bound by the terms and conditions of this Agreement. Each Party has the right to subcontract some or all of the work to be performed by such Party under the terms of this Agreement. Each Party may also use the services of its Affiliates in connection with its performance under this Agreement. Customer agrees that the costs and expenses of such Affiliates or contractors charged to or incurred by Company shall be paid by Customer as part of the Company Reimbursable Costs.

15.0 **Independent Contractor; No Partnership; No Agency; No Utility Services**

15.1 Company and Customer shall be independent contractors. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party. This Agreement is not an agreement to provide or take utility services of any kind, including, without limitation, interconnection or other electric transmission services.

16.0 **[Reserved]**

17.0 **Safety**

17.1 Each Party shall be solely responsible for the safety and supervision of its own employees, representatives and contractors involved with its Work or any other activities contemplated by this Agreement. In connection with the performance contemplated by this Agreement, each Party shall, and shall require its representatives, contractors, and employees to, comply with all applicable Federal, state and local health and safety requirements, rules, regulations, laws and ordinances, including without limitation, the safety regulations adopted under the Occupational Safety and Health Act of 1970 ("OSHA"), as amended from time to time. While performing the Company Work, Company shall at all times abide by Company's safety standards and policies and Company's switching and tagging rules. During the term of this Agreement, the Party owning or controlling the applicable property or facilities shall have the authority to suspend the other Party's access, work or operations in and around such property or facilities in connection with any performance under this Agreement if, in its sole judgment, at any time hazardous conditions arise or any unsafe practices are being followed by

the other Party's employees, agents, representatives or contractors in connection with any such performance.

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18.0 **Required Approvals**

- 18.1 Subject to Section 23.3 of this Agreement, the obligations of each Party to perform its respective Work under this Agreement are expressly contingent upon (i) each Party receiving all licenses, permits, permissions, certificates, approvals, authorizations, consents, franchises and releases (including, without limitation and as applicable, the Existing Facilities Approvals, New Facilities Approvals and Land Use Approvals) from any local, state, or federal regulatory agency or other governmental agency or authority (which shall include the FERC and may also include, without limitation and if applicable, the NYPSC) or any other third party that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "Required Approvals"), (ii) each Required Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion, and (iii) all applicable appeal periods with respect to the Required Approvals having expired without any appeal having been made or, if such an appeal has been made, a full, final and non-appealable determination having been made regarding same by a court or other administrative body of competent jurisdiction, which determination disposes of or otherwise resolves such appeal (or appeals) to the satisfaction of both Parties in their respective sole discretion.
- 18.2 Subject to Section 23.3 of this Agreement, if any application or request is made in connection with seeking any Required Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate, subject to Customer's obligation to pay Company in accordance with the terms of this Agreement (including, without limitation, Sections 21.3 and 21.4 hereof) for all Company Reimbursable Costs. For the avoidance of doubt: all of the Company's actual costs in connection with seeking any Required Approvals shall also be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

19.0 **Environmental Protection; Hazardous Substances or Conditions**

- 19.1 The Company shall in no event be liable to Customer, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives, or any third party with respect to, or in connection with, the presence of any Hazardous Substances which may be present at or on the Site or any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or

which the Company, its Affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or

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generate at or on such properties or facilities unless and to the extent caused by the negligence, intentional misconduct, or unlawful act of the Company, its Affiliates or contractors, or their respective officers, directors, employees, agents, servants, or representatives, and except as provided above Company hereby disclaims any and all such liability to the fullest extent allowed by applicable law.

Customer agrees to hold harmless, defend, and indemnify the Company, its Affiliates and contractors, and their respective directors, members, managers, partners, officers, agents, servants, employees and representatives from and against any and all Damages relating to, or arising out of (i) the presence, discovery, Release, Threat of Release or generation of Hazardous Substances in violation of Environmental Laws at or on the Site or any Customer- or third party-owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property), or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment (including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*) in connection with this Agreement or the Fish Passage Project, except to the extent such presence, discovery, Release, Threat of Release, generation or breach is attributable to the negligence, intentional misconduct, or unlawful act of any Company Indemnified Party (with respect to which the Company shall indemnify the Customer Indemnified Parties in accordance with Section 12.1(b) of this Agreement). The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration, completion, cancellation or earlier termination of this Agreement.

- 19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in the Site or any Customer- owned, occupied, used, controlled, managed or operated facilities or property (including, without limitation, easements, rights-of-way, or other third-party property) to be used or accessed in connection with the Company Work or this Agreement and known to Customer at the time. Prior to Company's commencement of the Company Work, Customer shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to investigate in accordance with Good Utility Practice and Applicable Requirement(s) the presence and nature of any such Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability

or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

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20.0 **Suspension of Work**

20.1 Customer may interrupt, suspend, or delay the Company Work following written notice to Company specifying the nature and expected duration of the interruption, suspension, or delay. Company will use reasonable efforts to suspend performance of the Company Work as requested by Customer. Customer shall be responsible to pay Company (as part of Company Reimbursable Costs) for all costs incurred by Company and/or its Affiliates that arise as a result of such interruption, suspension or delay. The foregoing notwithstanding, Company shall not be required to interrupt, suspend or delay any Company Work to the extent continued performance of such Company Work is reasonably required (i) due to emergency circumstances, (ii) for safety, security or reliability reasons (including, without limitation, to protect any facility(ies) from damage or to protect any person(s) from injury), (iii) to return any facility(ies) to service in accordance with applicable standards, or (iv) to comply with Good Utility Practice or any Applicable Requirement(s).

21.0 **Right to Terminate Agreement**

21.1 If either Party (the “*Breaching Party*”) (a) fails to pay any amount when due under the terms of this Agreement or fails to comply with or perform, in any material respect, any of the other terms or conditions of this Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) makes a general assignment for the benefit of its creditors, then the other Party (the “*Non-Breaching Party*”) shall have the right, without prejudice to any other right or remedy and after giving five (5) Days’ written prior notice to the Breaching Party and a reasonable opportunity for cure (not to exceed thirty (30) Days in the case of a failure to pay amounts when due and one hundred and twenty (120) Days in the case of a non-monetary breach), to terminate this Agreement, subject to Sections 21.3 and 21.4 of this Agreement. Subject to compliance with Section 22.1 of this Agreement, if applicable, the Non-Breaching Party shall also have the right to pursue any and all rights it may have against the Breaching Party under applicable law, subject to other applicable terms and conditions of this Agreement (including, without limitation, any applicable limitations on liability contained herein).

21.2 Subject to Sections 21.3 and 21.4 of this Agreement, this Agreement may also be terminated upon prior written notice (i) by Company in the event that Company Work under this Agreement is suspended or delayed for a period exceeding ninety (90) consecutive days as the result of any continuing dispute between the Parties and Company reasonably determines that Customer has not actively participated in Company’s good faith efforts to resolve such dispute pursuant to Section 22.1

hereof for at least sixty (60) days immediately preceding such written notice, or (ii) under the circumstances contemplated by, and in accordance with, Section

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18.2 of this Agreement.

- 21.3 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, each Party shall discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts relating to its Work upon terms that are reasonably expected to minimize all associated costs, provided, however, that nothing herein will restrict Company's ability to complete aspects of the Company Work that Company must reasonably complete in order to return its facilities and its property to a configuration in compliance with Good Utility Practice and all Applicable Requirements and to enable such facilities to continue, commence or recommence commercial operations.
- 21.4 In the event of any early termination or cancellation of the Company Work or this Agreement as contemplated by any provision of this Agreement, Customer shall also pay Company for:
- (i) all Company Reimbursable Costs for Company Work performed on or before the effective date of termination or cancellation;
 - (ii) all other Company Reimbursable Costs incurred by Company and/or its Affiliates in connection with the Company Work prior to the effective date of termination or cancellation, including, without limitation, for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;
 - (iii) all Company Reimbursable Costs incurred to unwind Company Work that was performed prior to the effective date of termination or cancellation to the extent reasonably necessary to return Company's facilities to a configuration in compliance with Good Utility Practice and all Applicable Requirements;
 - (iv) all Company Reimbursable Costs arising from cancellation costs relating to orders or contracts entered into in connection with the Company Work prior to the effective date of termination or cancellation; and
 - (v) all Company Reimbursable Costs arising from demobilization expenses incurred by Company and/or its Affiliates which cannot be reasonably avoided or mitigated.

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22.0 **Dispute Resolution**

22.1 Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Following the occurrence of a dispute, each Party shall designate one or more representatives with the authority to negotiate the particular matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) Days (subject to extension by mutual agreement of the Parties acting in good faith) may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the written agreement of both Parties to participate in such an alternative dispute resolution process.

23.0 **Force Majeure**

23.1 A “*Force Majeure Event*” shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, terrorism, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving regulatory, license and/or permit requests necessary in connection with the Company Work or the Customer Required Actions, order by any federal or state regulatory agency, or other causes, conditions or circumstances beyond the affected Party’s reasonable control. Without limiting the foregoing, a “Force Majeure Event” shall also include unavailability of personnel, equipment, supplies, or other resources (“*Resources*”) due to diversion of such Resources for other utility-related duties in connection with an emergency or other similar contingency, including, without limitation, storms or other adverse weather conditions.

If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their, respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties’ continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement; provided,

however, that, notwithstanding any such termination, Customer shall pay the Company all of the Company Reimbursable Costs in accordance with Sections 21.3 and 21.4 of this Agreement.

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- 23.2 Within thirty (30) Days after the cessation of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.
- 23.3 For the avoidance of doubt: to the extent any Party has a payment obligation pursuant to the terms of this Agreement, such payment obligation shall not be subject to or conditioned upon such Party receiving funding or reimbursement from any third party (and any failure to secure such funding or reimbursement shall not constitute a Force Majeure Event), nor shall any such obligation be conditioned upon the other Party executing any certificates or other instruments not expressly and specifically required by the terms of this Agreement.

24.0 **Compliance with Law**

- 24.1 Each Party shall comply, at all times, with all Applicable Requirements in connection with this Agreement and performance of its Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations. For the avoidance of doubt: neither Party shall be required to undertake or complete any action or performance under this Agreement that is inconsistent with such Party's standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Good Utility Practice and/or any Applicable Requirement(s).

25.0 **Proprietary and Confidential Information**

- 25.1 Each Party acknowledges that, in the course of the performance of this Agreement, it may have access to Proprietary Information of the other Party.
- 25.2 GENERAL RESTRICTIONS. Upon receiving Proprietary Information, the Receiving Party) and its Representative shall keep in strict confidence and not disclose to any person (with the exception of the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Article to the extent caused by its Representatives. Customer agrees that any Proprietary Information will be used solely for the Fish Passage Project and will not be used,

either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.

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25.3 EXCEPTIONS. Subject to Section 25.4 hereof, the Receiving Party shall not be precluded from, nor liable for, disclosure or use of Proprietary Information that:

- 25.3.1 is in or enters the public domain, other than by a breach of this Article; or
- 25.3.2 is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or
- 25.3.3 is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement, as evidenced by written records; or
- 25.3.4 is disclosed more than two (2) years after first receipt of the disclosed Proprietary Information, or two (2) years after the termination or expiration of this Agreement, whichever occurs later (the “Non-Disclosure Term”); or
- 25.3.5 is disclosed following receipt of the Disclosing Party’s written consent to the disclosure of such Proprietary Information; or
- 25.3.6 is necessary to be disclosed, in the reasonable belief of the Receiving Party or its Representatives, for public safety reasons, provided, that, Receiving Party has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court, or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information. Receiving Party will reasonably cooperate with the Disclosing Party’s efforts to obtain such protective order.

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- 25.4 Each Party acknowledges that information and/or data disclosed under this Agreement may include “critical energy infrastructure information” under applicable FERC rules and policies (“CEII”) and critical infrastructure protection information as defined under applicable NERC standards and procedures (“CIP”). Receiving Party shall, and shall cause its Representatives to, strictly comply with any and all laws, rules and regulations (including, without limitation, FERC and NERC regulations, rules, orders, standards, procedures and policies) applicable to any such CEII and/or CIP disclosed by or on behalf of Disclosing Party or that relates to any of Disclosing Party’s or Disclosing Party’s Affiliates’ facilities.

Neither the Receiving Party nor its Representatives shall divulge any such CEII or CIP to any person or entity, directly or indirectly, unless permitted to do so by law and unless the Receiving Party has first obtained, in each case, the express specific written consent of the Disclosing Party and any affected Affiliate of the Disclosing Party. In any event, to the extent that the Receiving Party or any of its Representatives seeks or is ordered to submit any such CEII or CIP to FERC, a state regulatory agency, court or other governmental body, the Receiving Party shall, in addition to obtaining the Disclosing Party’s and its Affiliate’s prior written consent (as applicable), seek a protective order or other procedural protections to ensure that such information is accorded CEII or CIP status, as applicable, and is otherwise treated as confidential.

In the case of any Proprietary Information that is CEII or CIP, Receiving Party’s obligations and duties under this Article shall survive until (i) the expiration of the Non-Disclosure Term, (ii) the date on which such CEII or CIP, as applicable, is no longer required to be kept confidential under applicable law, or (iii) the date as of which the Disclosing Party provides written notice to the Receiving Party that such CEII or CIP, as applicable, is no longer required to be kept confidential, whichever is later. With respect to CEII and CIP, in the event of any conflict or inconsistency between this Section and any other term or provision of this Agreement, this Section shall govern in connection with such CEII and CIP, as applicable.

- 25.5 Notwithstanding any provision of this Agreement to the contrary, all assets, equipment and facilities procured or constructed by or on behalf of Company, and all plans, designs, specifications, drawings and other materials and documents created or prepared by or for Company, in connection with the Work, and all title, copyright, intellectual property and other rights therein, shall be and remain the sole property of Company.
- 25.6 This Article shall survive any termination, expiration, completion or cancellation of this Agreement.

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26.0 **Effect of Applicable Requirements; Governing Law**

- 26.1 If and to the extent a Party is required to take, or is prevented or limited in taking, any action or performance with respect to this Agreement by any Applicable Requirement(s), such Party shall not be deemed to be in breach of this Agreement as a result of such compliance with the Applicable Requirement(s).
- 26.2 This Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict-of-laws doctrine, and applicable Federal law. The Company and Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in such State, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

- 27.1 NOTICES; FORM AND ADDRESS. All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered (provided, that, if the date of receipt is not a Day, then the date of receipt shall be deemed to be the immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by facsimile (provided, that, if the date of acknowledgment is not a Day, then the date of receipt shall be deemed to be the immediately succeeding Day), (iii) upon the expiration of the third (3rd) Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party at the following address:

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To Customer: Erie Boulevard Hydropower, L.P.
800 Starbuck Ave.
Watertown, NY 13601
Attention: Director of Operations
Phone: 315-779-2401
Fax: 315-786-7121

With a copy to:

Erie Boulevard Hydropower, L.P.
c/o Brookfield Renewable Partners
41 Rue Victoria
Gatineau, QC J8X 2A1
Attention: Legal Department
Phone: 819-561-2722
Fax: 819-561-7188

To Company: Ms. Kathryn Cox-Arslan
Director, Transmission Commercial Services
40 Sylvan Road
Waltham, MA 02451
(781) 907-2406

Either Party may change its address by giving the other Party notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.

- 27.2 EXERCISE OF RIGHT. No failure or delay on the part of either Party in exercising any right, power, or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege.
- 27.3 HEADINGS; CONSTRUCTION. The descriptive headings of the several Articles, sections, and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof. Each Party and its counsel have participated fully in the review and preparation of this Agreement; this Agreement shall be considered to have been drafted by both Parties. Any rule of construction to the effect that ambiguities or inconsistencies are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against either Party.

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- 27.4 INCORPORATION OF SCHEDULES AND EXHIBITS. The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency or conflict exists between the provisions of this Agreement and any schedules, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.
- 27.5 PRIOR AGREEMENTS; MODIFICATIONS. This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments, or representations concerning such subject matter.
- Notwithstanding the foregoing, the Parties agree that neither this Section, nor any other provision of this Agreement, shall be deemed to amend or modify the Interconnection Agreement or the Site Agreement, each of which shall remain in full force and effect in accordance with their respective terms.
- Each Party acknowledges that the other Party has not made any representations other than those that are expressly contained herein, if any. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized representative of the Party against whom the amendment, modification, or waiver is sought to be enforced. The Project Managers shall not be authorized representatives within the meaning of this Section.
- 27.6 SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by, or determined to be invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- 27.7 NOUNS AND PRONOUNS. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.
- 27.8 NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.
- 27.9 VALIDITY. Each Party hereby represents that the provisions of this Agreement

constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms.


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27.10 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including, without limitation, by e-mailed PDF) shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means (including, without limitation, by e-mailed PDF) shall be deemed to be their original signatures for all purposes.


[Signatures are on following page.]

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IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

By: 
ERIE BOULEVARD HYDROPOWER, LP _____
Name: Thomas Under
Title: Vice-President

By: 
Name: JOND, Elmer
Title: Director, E.B.H. L.P.
Operations

By: 
NIAGARA MOHAWK POWER CORPORATION _____
Name: Kathryn Cox-Arslan
Title: Director, Transmission Commercial Services

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LIST OF ATTACHMENTS, SCHEDULES AND EXHIBITS

Exhibit A	Scope of Company Work
Exhibit B	Preliminary Milestone Schedule
Exhibit C	Customer Required Actions
Exhibit D	Insurance Requirements
Exhibit E	Map of Site
Schedule I	Real Property Standards
Schedule II	Environmental Due Diligence Procedure

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Exhibit A: Scope of Company Work

The Company Work shall consist of the following:

1. Perform preliminary engineering work, studies and other tasks necessary to develop a detailed project plan to implement the work contemplated by this Exhibit as specified below.
2. With the exception of any Land Use Approvals, prepare, file for, and use reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state and federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities (the “*New Facilities Approvals*”).

With the exception of any Land Use Approvals, prepare, file for, and use commercially reasonable efforts to obtain all required permits, licenses, consents, permissions, certificates, approvals, and authorizations from all local, state or federal governmental agencies (including, without limitation and as applicable, the NYPSC and FERC), NYISO and any other third parties for Company to decommission, dismantle and remove the Existing Facilities (the “*Existing Facilities Approvals*”).

The terms “New Facilities Approvals” and “Existing Facilities Approvals” shall not include any Land Use Approvals; Customer shall be solely responsible for obtaining all Land Use Approvals.

3. Subject to Section 5.4 of the Agreement, design, engineer, procure, construct, test and place into service the new (permanent or temporary) Company-owned and/or operated facilities, and the modifications to existing Company-owned and/or operated facilities, including, without limitation, the New Facilities, necessary or advisable to support the Customer’s accomplishment of the Fish Passage Project, including, but not limited to:
 - a. retirement of /modifications to Heuvelton Station 4.8kv steel support structure; and
 - b. distribution/transmission line and structure modifications.
4. Subject to Sections 5.5 of the Agreement, decommission, dismantle and remove the Existing Facilities.
5. Prepare, file for, and use reasonable efforts to obtain any other Required Approvals (other than Land Use Approvals) that must be obtained by Company to enable it to perform the work contemplated by this Exhibit.
6. Inspect, review, witness, examine and test, from time to time, Company’s work

contemplated herein and conduct other project management, administration and oversight activities in connection with the work contemplated by this Exhibit.

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7. Review, from time to time, permitting, licensing, real property, and other materials relating to the work contemplated herein, including, without limitations, all documents and materials related to the New Facilities Property Rights, if applicable, and any Required Approvals.
8. Retain and use outside experts, counsel, consultants, and contractors in furtherance of the work contemplated herein.
9. Perform any other reasonable tasks necessary or advisable in connection with the work contemplated by this Exhibit (including, without limitation, any changes thereto).

The Company Work may be performed in any order as determined by the Company. For the avoidance of doubt: the Company shall not have any responsibility for seeking or acquiring any real property rights in connection with the Company Work, the Fish Passage Project or this Agreement including, without limitation, licenses, consents, permissions, certificates, approvals, or authorizations, or fee, easement or right of way interests. Neither this Agreement nor the Company Work include securing or arranging for Customer or any third party to have access rights in, through, over or under any real property owned or controlled by the Company; any such access rights would be the subject of separate written agreements.

NOTE: Company's specifications for electrical requirements referenced for this Agreement include: ESB-750; ESB-752; ESB-755 and ESB-756, Appendix A as such may be amended, modified and superseded from time to time. See:

https://www9.nationalgridus.com/niagaramohawk/construction/3_elec_specs.asp

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Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task	Milestone	Estimated Timeframe	Responsible Party
1.	Execute Agreement	October 2016	Customer/Company
2.	Make Initial Prepayment	FERC Approval Date	Customer
3.	Site Surveying/ Planning	November 2016	Customer/ Company
3.	Field Work Start	April 2017	Customer
4.	Field Work Completion	August 2017	Customer

The dates above represent the Parties’ preliminary schedule, which is subject to adjustment, alteration, and extension. The Company does not and cannot guarantee or covenant that any outage necessary in connection with the Work will occur when scheduled, or on any other particular date or dates, and shall have no liability arising from any change in the date or dates of such outages. For the avoidance of doubt: potential or estimated delays in the issuance or receipt of Required Approvals or the acquisition of New Facilities Property Rights, if applicable, are not included in such preliminary schedule.

Exhibit C: Customer Required Actions

The Customer Required Actions shall consist of the following:

1. Customer shall grant and convey to Company perpetual easements and rights, as needed, for the construction, installation, testing, ownership, use, operation, and maintenance of the portions of the New Facilities to be located on, over, across, through Customer's property (the "*Customer Grant of Easement*"). The Customer Grant of Easement, if necessary, will take the form of an amendment to the Bargain and Sale Deed in form and substance satisfactory to Company in its sole but reasonable discretion and provided without charge or cost to Company. If applicable, Customer shall further use reasonable efforts to acquire all other easements, access rights, rights-of-way, fee interests, and other rights in property, if any, that are necessary to accommodate Company's construction, installation, testing, ownership, use, operation, and maintenance of the New Facilities, as determined to Company's satisfaction in its sole discretion (together with the Customer Grant of Easement, collectively the "*New Facilities Property Rights*"). Customer shall convey, or arrange to have conveyed, to the Company all New Facilities Property Rights, each such conveyance to be in form and substance satisfactory to Company in its sole discretion and without charge or cost to Company.

Customer acknowledges and agrees that the Company is required to abide by all Applicable Requirements, including, without limitation, any and all land use, zoning, planning and other such Requirements. To the extent necessary, Customer shall prepare, file for, and use reasonable efforts to obtain, on the Company's behalf, all required subdivision, zoning and other special, conditional use or other such land use permits or other discretionary permits, approvals, licenses, consents, permissions, certificates, variances, zoning changes, entitlements or any other such authorizations from all local, state and federal governmental agencies and any other third parties for Company to construct, install, commission, own, use, operate, and maintain the New Facilities and for Company to decommission, dismantle and remove the Existing Facilities (the "*Land Use Approvals*").

2. In undertaking or performing any work required of it under the terms of this Agreement, including, without limitation, securing the New Facilities Property Rights and Land Use Approvals, Customer shall comply, at all times, with (i) the Real Property Standards, including, without limitation, performing all obligations of the Requesting Party as contemplated by the Real Property Standards (see Schedule 1), and (ii) the Environmental Due Diligence Procedure (see Schedule 2) , as each may be updated, amended or revised from time to time. Customer shall coordinate with the Company's Environmental Department; the Company's Project Manager will provide Customer with the name and contact information for an appropriate Company representative in the Company's Environmental Department.

3. Customer shall prepare, file for, and use commercially reasonable efforts to obtain all Required Approvals necessary to perform its obligations under this Agreement.

4. If and to the extent applicable or under the control of the Customer, provide complete and accurate information regarding the Project and the site(s) where Work is to be performed, including, without limitation, constraints, space requirements, underground or hidden facilities and structures, and all applicable data, drawings and specifications.
5. Customer shall provide adequate and continuous access to the site(s) where Company Work is to be performed. Such access is to be provided to Company and its contractors and representatives for the purpose of enabling them to perform the Company Work as and when needed and shall include adequate and secure parking for Company and contractor vehicles, stores and equipment.
6. Other responsibilities and access deemed necessary by Company to facilitate performance of the Company Work.

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Exhibit D: Insurance Requirements

- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required, coverage shall include the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.
 - Commercial General Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with the following minimum limits:
 - (A) Bodily Injury - \$1,000,000/\$1,000,000
Property Damage - \$1,000,000/\$1,000,000
OR
 - (B) Combined Single Limit - \$1,000,000
OR
 - (C) Bodily Injury and Property Damage per Occurrence - \$1,000,000
General Aggregate & Product Aggregate - \$2,000,000 each
 - Automobile Liability - covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of either Party under or in connection with this Agreement with minimum limits of: Combined Single Limit - \$1,000,000 per occurrence.
 - Umbrella or Excess Liability, coverage with a minimum limit of \$ 4,000,000.
 - Any combination of Commercial General Liability, Automobile Liability and Umbrella or Excess Liability can be used to satisfy the limit requirement for these coverages.
1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. Customer shall provide such certificates or evidence of insurance to Company at the following address:

To: National Grid c/o Niagara Mohawk Power Corporation
Attention: Earl A. Barber
300 Erie Boulevard West
Syracuse, NY 13108

Company shall provide such certificates or evidence of insurance to Customer at the following address:

To: Brookfield Renewable Energy Group
c/o Erie Boulevard Hydropower, L.P.
800 Starbuck Avenue, Suite 802
Watertown, NY 13601

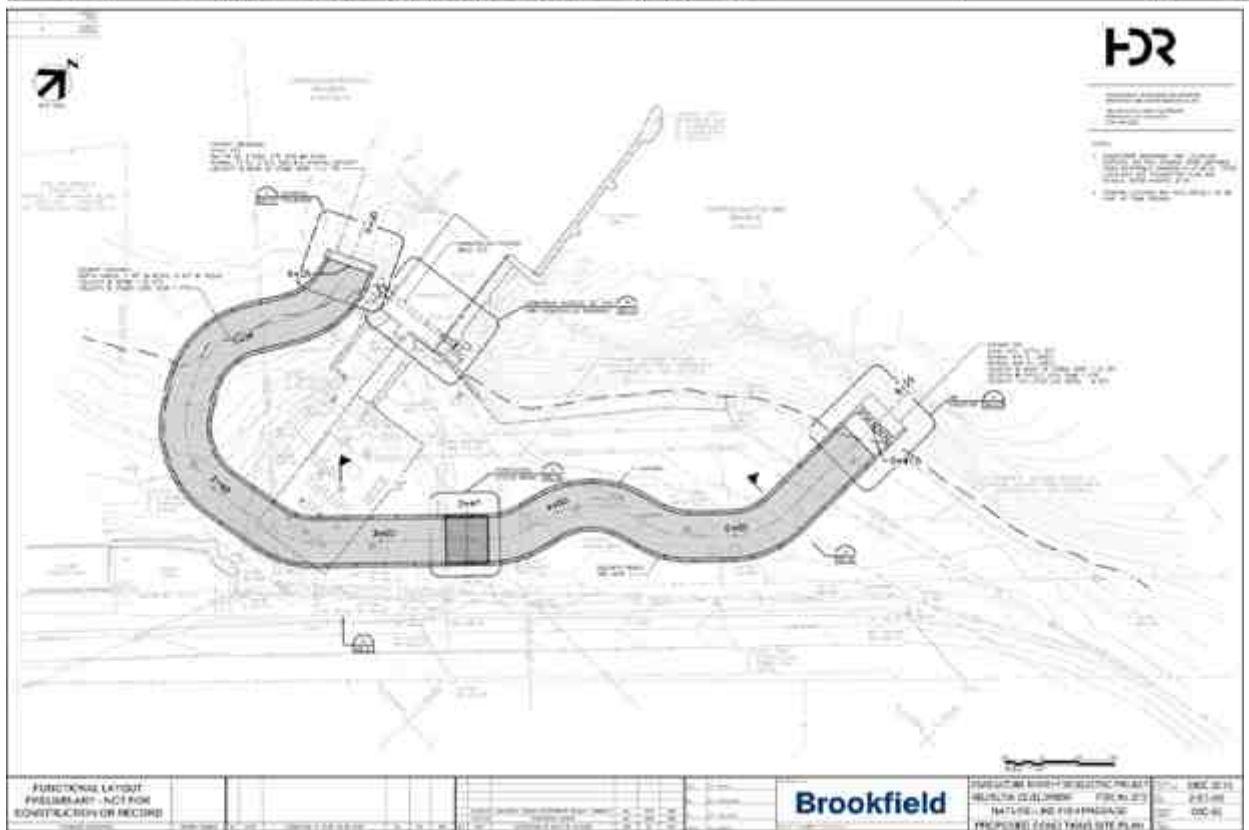
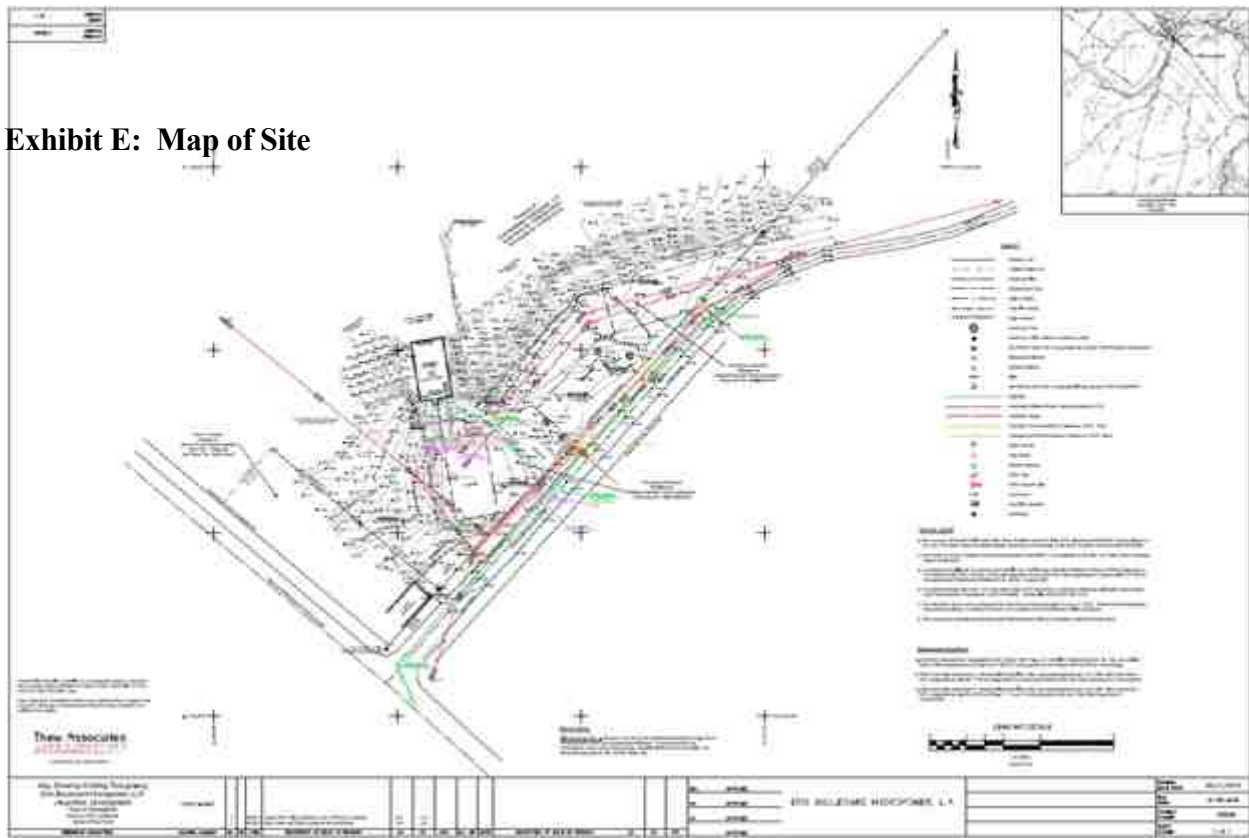
2. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

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3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.
4. To the extent requested, each Party shall furnish to the other Party copies of any accidents report(s) sent to the furnishing Party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work under this Agreement.
5. Each Party shall comply with any governmental and/or site-specific insurance requirements even if not stated herein.
6. By the date that such coverage is required, each Party represents to the other Party that it will have full policy limits available and shall notify the other Party in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
7. Customer shall name the Company as an additional insured for all coverages except Workers' Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of Customer relating to the Fish Passage Project and associated Work.

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Exhibit E: Map of Site



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Schedule I: Real Property Standards

5.0 STANDARDS AND REQUIREMENTS RELATING TO THIRD PARTY ACQUISITION AND TRANSFER OF REAL PROPERTY INTERESTS TO NIAGARA MOHAWK POWER CORPORATION FOR ELECTRIC FACILITIES

Note Regarding Application/Reservation of Rights

The standards set forth herein are intended to apply generally in cases where real property interests shall be acquired by third parties and transferred to Niagara Mohawk Power Corporation (“NMPC”) in connection with the construction of new electric facilities (the “New Facilities”). NMPC advises, however, that it may impose additional or modified requirements in its sole discretion and/or on a case-by-case basis and, therefore, reserves the right to amend, modify or supplement these standards at any time prior to transfer/acceptance. Third parties shall not deviate from these standards unless expressly authorized in writing by NMPC, or the terms of the Agreement between NMPC and such third party to which these standards are attached expressly provide otherwise.

5.1 General Requirements

Unless otherwise expressly authorized in writing by NMPC, a third party requesting relocation of NMPC electric facilities and/or responsible for siting and constructing the New Facilities (the “Requesting Party”) shall acquire all interests in real property that, in the opinion of NMPC, are necessary for the construction, reconstruction, relocation, operation, repair, maintenance, and removal of such Facilities. Further subject to the standards set forth herein, the Requesting Party shall obtain NMPC’s approval of the proposed site or sites prior to the Requesting Party’s acquisition or obtaining site control thereof. As a general rule, except for railroads, public lands and highways, the Requesting Party shall acquire a fee-owned right-of-way or a fully-assignable/transferrable easement (each as further described below) for the New Facilities in all cases where NMPC will be assuming ownership thereof. The Requesting Party shall pay and be solely responsible for paying all costs and expenses incurred by the Requesting Party and/or NMPC that relate to the acquisition of all real property interests necessary and proper to construct, reconstruct, relocate, operate, repair, maintain and remove, as applicable, the New Facilities. The Requesting Party shall pay and be solely responsible for paying all costs associated with the transfer of real property interests to NMPC, including, but not limited to, closing costs, subdivision costs, transfer taxes and recording fees. The Requesting Party shall reimburse NMPC for all costs NMPC may incur in connection with transfers of real property interests. Title shall be transferred only after having been determined

satisfactory by NMPC. Further, NMPC reserves the right to condition its acceptance of title until such time as the New Facilities have been constructed, operational tests have

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been completed, and the New Facilities placed in service (or determined by NMPC to be ready to be placed in service), and the Requesting Party is strongly advised to consult with NMPC's project manager as to the anticipated sequencing of events.

The Requesting Party will be responsible for payment of all real estate taxes (i.e., county, village, city/town and/or school) until such time as title has been transferred to NMPC (allocation of responsibility for payment of real estate taxes following the transfer to be determined on a case-by-case basis).

Prior to such transfer, the Requesting Party shall furnish to NMPC the original costs of any improvements by type/category of property; i.e., conductors, towers, poles, station equipment, etc. These original costs will show year of construction by location of such improvements. This information may be transmitted by NMPC to Federal, State or local governmental authorities, as required by law.

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5.1.1 Title Documentation; Compliance with Appropriate Conveyancing Standards

The real property interests necessary for the construction, reconstruction, relocation, operation, repair, maintenance and removal of the New Facilities shall be conveyed to NMPC in fee simple (by warranty deed) or by fully-assignable/transferable easement approved by NMPC, with good and marketable title free and clear of all liens, encumbrances, and exceptions to title for a sum of \$1.00. With respect to any approved conveyance of easements, the Requesting Party shall subordinate pertinent mortgages to the acquired easement rights or otherwise secure non-disturbance agreements or the like from any mortgagees. The Requesting Party shall indemnify, defend, and hold harmless NMPC, its agents and employees, officers, directors, parent(s) and affiliates, and successors in interest, from all liens and encumbrances against the property conveyed. The Requesting Party further agrees to provide to NMPC a complete field survey (with iron pin markers delineating the perimeter boundaries of the parcel or the centerline of the entire right-of-way in the case of an electric transmission line), an abstract of title (of at least 40 years or such longer period as may be required by NMPC on a case-by-case basis), and a 10-year tax search for real property interests to be transferred to NMPC. The Requesting Party shall be required to provide NMPC with a title insurance commitment with a complete title report issued by a reputable and independent title insurance company for any real property rights in fee or easement that are to be transferred to NMPC. At the time of the transfer of such interests to NMPC, the Requesting Party shall provide a title insurance policy naming NMPC as the insured covering the real property interests, in fee or easement, that are to be transferred to NMPC.

The Requesting Party shall provide such title documentation and title insurance as shall be required by the NMPC real estate attorney assigned to review and close the transfer of ownership from the Requesting Party to NMPC. The Requesting Party shall request direction from such attorney with respect to preparation of abstracts of title, title insurance commitments and policies, and preparation of boundary surveys that comply with ALTA/ACSM Land Title Survey Standards and which must conform to proposed legal descriptions. The Requesting Party will be provided legal forms which include acceptable language and format for title transfer. Title shall be determined satisfactory by the NMPC real estate attorney in his or her sole discretion.

Title requirements of NMPC shall be of a reasonable nature and consistent with legally sound title practice in the applicable jurisdiction. Without limiting the foregoing, title shall not be encumbered by any liens or encumbrances superior to or on par with any applicable lien of NMPC's indentures or otherwise deemed objectionable by the NMPC real estate attorney so assigned. All title insurance fees and premiums (including, without limitation, costs of title insurance policy endorsements) shall be paid by the Requesting Party at or prior to the date of transfer.

The Requesting Party shall provide to NMPC conformed copies of all necessary real property interests not prepared by, or directly for, or issued to NMPC.

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5.1.2 Forms

The Requesting Party shall use NMPC-approved forms (including form subordination agreements) for obtaining, recording and transferring fee-owned right-of-way and easements. Proposed changes to such forms shall be discussed with and agreed upon with the assigned NMPC real estate attorney.

5.2 **Areas Where Easements/Permits Are Acceptable**

5.2.1 Railroads

Where the New Facilities shall cross railroads, the Requesting Party shall obtain railroad crossing permits or other standard railroad crossing rights prior to constructing the crossing.

5.2.2 Public Land

Where the New Facilities shall cross public land, the Requesting Party shall obtain an easement for the crossing and/or any permits necessary to construct, operate and thereafter maintain such Facilities.

5.2.3 Highways and other Public Roads

Where the New Facilities shall cross highways or other public roads, the Requesting Party shall obtain crossing permits, easements, or other standard highway crossing rights prior to constructing the crossing, from the agency or agencies authorized to issue such rights.

5.2.4 Off Right-of-Way Access

In all cases, the Requesting Party shall obtain access/egress rights to the New Facilities acceptable to NMPC. Where construction and maintenance access along the fee-owned or easement strip is not possible or feasible, the Requesting Party shall obtain easements for off right-of-way access and construct, where necessary, permanent access roads for construction and future operation and maintenance of the New Facilities. NMPC will review the line route for maintenance access and advise the Requesting Party of locations requiring permanent off right-of-way access. The Requesting Party shall obtain permanent easements and construct the permanent maintenance access roads. Typically, a width easement of 25 feet maximum shall be obtained for off right-of-way access, but the dimensions shall be per NMPC requirements on a case-by-case basis.

The Requesting Party shall obtain all necessary rights of access and licenses, including adequate and continuing rights of access to NMPC's property, as necessary for NMPC

to construct, operate, maintain, replace, or remove the New Facilities, to read meters, and to exercise any other of its obligations from time to time. The Requesting Party

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hereby agrees to execute any such further grants, deeds, licenses, assignments, instruments or other documents as NMPC may require to enable it to record such rights-of-way, easements, and licenses.

5.2.5 Temporary Roads

The Requesting Party shall obtain temporary easements for access roads which are necessary for construction, but not for future operation and maintenance of, the New Facilities. NMPC shall concur with respect to any temporary roads being acquired versus permanent roads. If any disagreements occur with respect to the type of road being needed, NMPC's decision shall be final. In the event NMPC determines that permanent roads will not be required for operation and maintenance (including repair or replacement), easements for temporary roads shall not be assigned or otherwise transferred to NMPC by the Requesting Party.

5.2.6 Danger Trees

If it is determined that the fee-owned or principal easement strip is not wide enough to eliminate danger tree concerns, the Requesting Party shall obtain additional permanent easements for danger tree removal beyond the bounds of the principal strip. The additional danger tree easement rights may be general in their coverage area, however if a width must be specified, NMPC Forestry shall make that determination but in no case shall less than 25' feet be acquired beyond the bounds of the principal strip.

5.2.7 Guy and Anchor Rights

The Requesting Party shall obtain an additional permanent fee-owned strip or easement for guys and anchors when the fee-owned or principal easement strip is not wide enough to fully contain guys, anchors and, other such appurtenant facilities.

5.3 **Dimensions**

Dimensional requirements with respect to electric station/substation facilities will vary on a case-by-case basis. In all cases, however, the Requesting Party shall obtain sufficient area to allow safe construction, operation and maintenance of the New Facilities, in conformity with applicable land use and environmental laws, rules and regulations, including, without limitation, bulk, setback and other intensity requirements of applicable zoning ordinances, subdivision regulations, and wetlands setback requirements. Basic width for the fee-owned or easement strip for 115kV transmission lines shall be 100 feet, with the transmission facility constructed in the center of the strip. NMPC will advise the Requesting Party if there will be any additional right-of-way requirements. This requirement may be modified by the agreement of the parties as the scope of the project is further developed or if there are changes to the project. Where extreme side-hill exists, additional width beyond the 25

feet may be required on the uphill side of the strip to allow additional danger tree removal.

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Where guyed angle structures are to be installed, additional fee strip widths or permanent easement shall be obtained by the Requesting Party on the outside of the angle to provide for installation of guys and anchors within the fee-owned strip or permanent easement. The width of the additional strip shall be a minimum of 25 feet. The length of the strip shall be sufficient to assure that all guys and anchors will fall within the fee-owned strip. A 125' strip will then be typically required.

5.4 Eminent Domain

If condemnation in NMPC's name is required, the Requesting Party shall contact NMPC's project manager for additional details on any assistance NMPC may provide. Typically, the Requesting Party shall prepare all acquisition maps, property descriptions and appraisals. Contact shall be made with NMPC's surveyor, right-of-way supervisor and legal department, and all requirements shall be closely followed. The Requesting Party shall also prepare an Environmental Assessment and Public Need report (Environmental Impact Statement or equivalent) and any other report or reports which may be required. A certified survey may also be required. NMPC must approve the Requesting Party's attorney for all condemnation hearings and proceedings. NMPC participation in such proceedings will be required at the Requesting Party's sole cost and expense. The Requesting Party shall contact NMPC attorneys prior to undertaking any condemnation proceedings for proper procedures to follow. To the extent legally permissible, NMPC reserves the right to refuse the use of condemnation by the Requesting Party (if the Requesting Party has the legal authority to commence and conduct an eminent domain proceeding), or by itself, in its sole discretion.

5.5 Use of Existing NMPC Right-of-Way

Existing NMPC right-of-way will not be available for use for the New Facilities unless NMPC Engineering, Planning and Operating departments agree to the contrary. The Requesting Party will pay a mutually acceptable cost to use such lands if NMPC gives internal approval.

5.6 Public Right-of-Way

If the Requesting Party must use public right-of-way for the New Facilities, the Requesting Party shall arrange for and reimburse NMPC and/or other utilities for any relocation which may be necessary.

5.7 General Environmental Standards

The Requesting Party agrees that, prior to the transfer by the Requesting Party of any real property interest to NMPC, the Requesting Party shall conduct, or cause to be conducted, and be responsible for all costs of sampling, soil testing, and any other

methods of investigation which would disclose the presence of any Hazardous Substance which has been released on the Property or which is present upon the

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Property by migration from an external source, and which existed on the Property prior to the transfer, and shall notify NMPC in writing as soon as reasonably practicable after learning of the presence of Hazardous Substance upon said Property interest. The Requesting Party agrees to indemnify, defend, and save NMPC, its agents and employees, officers, directors, parents and affiliates, harmless from and against any loss, damage, liability (civil or criminal), cost, suit, charge (including reasonable attorneys' fees), expense, or cause of action, for the removal or management of any Hazardous Substance and relating to any damages to any person or property resulting from presence of such Hazardous Substance. The Requesting Party shall be required, at its sole cost and expense, to have a Phase I Environmental Site Assessment ("Phase I ESA") conducted on any such property which may be legally relied upon by NMPC and which shall be reviewed and approved by NMPC prior and as a condition to transfer. NMPC further reserves the right, in its sole discretion, to require that the Requesting Party have a Phase II Environmental Site Assessment conducted on any such property, also at the Requesting Party's sole cost and expense, if NMPC determines the same to be necessary or advisable, which (if required) shall be reviewed and approved by NMPC prior and as a condition to transfer.

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Schedule II: Environmental Due Diligence Procedure

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