FERC rendition of the electronically filed tariff records in Docket No.

Filing Data:

CID: C000038

Filing Title: Cost Reimbursement Agreement 2324-Niagara Mohawk and Erie Boulevard Hydropower Company Filing Identifier: 1216

Type of Filing Code: 10

Associated Filing Identifier:

Tariff Title: NYISO Agreements Tariff ID: 58

Payment Confirmation: N
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Tariff Record Data:

Record Content Description: Agreement No. 2324

Tariff Record Title: CRA No. 2324 - NMPC and Erie Boulevard Hydropower Record Version Number: 0.0.0

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Proposed Date: 2016-11-18

Priority Order: 500

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Record Content Type: 2
Associated Filing Identifier:

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:

Erie Blvd. Cost Reimbursement Agreement

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.
“CEII” 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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

“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.

Erie Blvd. Cost Reimbursement Agreement

“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

Erie Blvd. Cost Reimbursement Agreement

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 having 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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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]

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

(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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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 deemed to be the
immediately succeeding Day), (ii) upon acknowledgment of receipt if sent by
facsimile (provided, that, if the date of acknowledgement is not a Day, then the
date of receipt shall 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:

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.]

Erie Blvd. Cost Reimbursement Agreement

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

ERIE BOULEVARD HYDROPOWER, LP

NIAGARA MOHAWK POWER CORPORATION

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

Exhibit B: Preliminary Milestone Schedule

PRELIMINARY MILESTONE SCHEDULE

Task

1.

2.

3.

3.

4.

Milestone

Execute Agreement Make Initial

Prepayment
Site Surveying/ Planning

Field Work Start Field Work

Completion

Estimated
Timeframe

October 2016

FERC Approval Date
 November 2016

April 2017
August 2017

Responsible Party

Customer/Company
 Customer

Customer/ Company
 Customer

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement 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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

Exhibit E: Map of Site

Erie Blvd. Cost Reimbursement Agreement

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/transferable 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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

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

Erie Blvd. Cost Reimbursement Agreement

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.

Erie Blvd. Cost Reimbursement Agreement

Schedule II: Environmental Due Diligence Procedure

Erie Blvd. Cost Reimbursement Agreement