

**AMENDMENT TO RESERVOIR OPERATING AGREEMENT
AND LETTER AGREEMENT**

This **AMENDMENT TO RESERVOIR OPERATING AGREEMENT AND LETTER AGREEMENT** (this "*Amendment*"), dated as of May 19, 2006, is by and between the HUDSON RIVER-BLACK RIVER REGULATING DISTRICT, a public benefit corporation organized and existing under the laws of the State of New York, having offices at 350 Northern Boulevard, Albany, New York 12204 (the "*District*"), and ERIE BOULEVARD HYDROPOWER, L.P., a Delaware limited partnership, having offices at 225 Greenfield Parkway, Suite 205, Liverpool, New York 13088 ("*Erie*").

WITNESSETH:

WHEREAS, the parties hereto have entered into that certain Reservoir Operating Agreement, dated as of July 1, 2003 (the "*Reservoir Operating Agreement*"), and that certain Letter Agreement, dated as of July 1, 2003 (the "*Letter Agreement*");

WHEREAS, the parties hereto have separately entered into a Stipulation of Settlement and Order, dated as of the date hereof (the "*Stipulation of Settlement and Order*"), pursuant to which they have settled certain claims filed by Erie contesting the District's budgets, assessments and apportionments for the District's fiscal years commencing July 1, 2000 and ending June 30, 2006;

WHEREAS, as partial consideration of the Stipulation of Settlement and Order, the parties have agreed to amend the Reservoir Operating Agreement and the Letter Agreement, in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein and in the Stipulation of Settlement and Order, the parties hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Reservoir Operating Agreement.
2. **AMENDMENTS TO RESERVOIR OPERATING AGREEMENT.** The Reservoir Operating Agreement shall be and is hereby amended, as of the date hereof, as follows:
 - a. **Term Extended.** The term of the Reservoir Operating Agreement shall be extended an additional six (6) years. Accordingly, Section 3.1 shall be deleted in its entirety and the following substituted in lieu thereof:

Term and Renewal. This Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until June 30, 2021 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereby agree to meet or initiate discussions on or before June 30, 2020 to discuss the extension or renegotiation of this Agreement.

- b. **Adjustment in the Water Fee.** The Reservoir Operating Agreement shall be amended such that an Adjustment in the Water Fee will be triggered upon two (2) separate and consecutive Events of Non-Cooperation by the District within any two (2) year period, rather than three (3) separate and consecutive Events of Non-Cooperation by the District in any three (3) year period. Moreover, once an Adjustment in the Water Fee is triggered, it will cause the Water Fee Increase to be waived for the next succeeding two (2) years, rather than the next one (1) year. Accordingly, Section 5.2 shall be deleted in its entirety and the following substituted in lieu thereof:

Upon the occurrence, within any two (2) calendar year period, of two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District, the Water Fee Increase shall be waived for the next succeeding two (2) years in which an Adjustment in the Water Fee (as defined below) has not already occurred; provided, however, that any Water Fee Increase waived shall continue to be taken into account for purposes of determining any future Water Fee Increase; and provided, further, that no Event of Non-Cooperation by Erie shall have been determined to have occurred during the same two (2) calendar year period as the respective Events of Non-Cooperation by the District. A waiver of the Water Fee Increase to which Erie is entitled is referred to herein as an "Adjustment in the Water Fee."

For example, if, by 2013, a determination of an Event of Non-Cooperation by the District has been made three times in 2006 and once in each of 2007, 2008, 2009, 2011 and 2013, then Erie shall be entitled to the following Adjustments in the Water Fee:

- (i) The first Adjustment in the Water Fee would occur in 2006 after the second determination of an Event of Non-Cooperation by the District in that year, which would result in the waiver of the Water Fee Increase for years 2007 and 2008.
- (ii) The second Adjustment in the Water Fee would occur in 2007 after the third Event of Non-Cooperation by the District in 2006 and the Event of Non-Cooperation by the District in 2007, which would result in the waiver of the Water Fee Increase for years 2009 (because 2008 was already waived) and 2010 such that the 2006 rate would remain in effect through 2010.
- (iii) The third Adjustment in the Water Fee would occur in 2009 after the Events of Non-Cooperation by the District in each of years 2008 and 2009, which would result in the waiver of the Water Fee Increase for years 2011 (because 2010 was already waived) and 2012 such that the 2006 rate would remain in effect through 2012.

Using the above referenced scenario, although there are two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in the

period 2011-2013, Erie is not entitled to an Adjustment in the Water Fee in 2013 because the two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any two (2) calendar year period. Therefore, in 2013, the Water Fee would increase to the rate that would have been in effect in 2013 if the Adjustments in the Water Fee had not been applied for each of the prior six years.

Further, using the same scenario above, if the second determination of an Event of Non-Cooperation by the District in 2006 was, instead, a determination of an Event of Non-Cooperation by Erie, then the first Adjustment in the Water Fee would not occur until 2007 as the determination of an Event of Non-Cooperation by Erie in 2006 bars "use" of the first determination of an Event of Non-Cooperation by the District in 2006 as said determination is no longer a consecutive determination with the second determination of an Event of Non-Cooperation by the District in that same year.

3. AMENDMENTS TO LETTER AGREEMENT. The Letter Agreement shall be and is hereby amended, as of the date hereof, as follows:

- a. **Term Not Extended.** The term of the Letter Agreement currently expires in accordance with the Reservoir Operating Agreement. Because the parties do not wish to extend the term of the Letter Agreement, the last paragraph of the Letter Agreement shall be deleted in its entirety and the following substituted in lieu thereof:

This Letter Agreement shall commence as of July 1, 2003 and shall continue in full force and effect until June 30, 2015 unless terminated as of an earlier date as otherwise provided herein.

- b. **Adjustment in the Water Fee.** The Letter Agreement shall be amended to reflect the agreement herein to amend Section 5.2 of the Reservoir Operating Agreement. Accordingly, the third and fourth paragraphs on page 3 and the first and second paragraphs of page 4 of the Letter Agreement shall be deleted in their entirety and the following substituted in lieu thereof:

As set forth in Section 5.2 of the Reservoir Operating Agreement, upon the occurrence, within any two (2) calendar year period, of two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District, the Water Fee Increase shall be waived for the next succeeding two (2) years in which an Adjustment in the Water Fee has not already occurred; provided, however, that any Water Fee Increase waived shall continue to be taken into account for purposes of determining any future Water Fee Increase; and provided, further, that no Event of Non-Cooperation by Erie shall have been determined to have occurred during the same two (2) calendar year period as the respective Events of Non-Cooperation by the District.

For example, if, by 2013, a determination of an Event of Non-Cooperation by the District has been made three times in 2006 and once in each of 2007, 2008, 2009,

2011 and 2013, then Erie shall be entitled to the following Adjustments in the Water Fee:

(i) The first Adjustment in the Water Fee would occur in 2006 after the second determination of an Event of Non-Cooperation by the District in that year, which would result in the waiver of the Water Fee Increase for years 2007 and 2008.

(iii) The second Adjustment in the Water Fee would occur in 2007 after the third Event of Non-Cooperation by the District in 2006 and the Event of Non-Cooperation by the District in 2007, which would result in the waiver of the Water Fee Increase for years 2009 (because 2008 was already waived) and 2010 such that the 2006 rate would remain in effect through 2010.

(iii) The third Adjustment in the Water Fee would occur in 2009 after the Events of Non-Cooperation by the District in each of years 2008 and 2009, which would result in the waiver of the Water Fee Increase for years 2011 (because 2010 was already waived) and 2012 such that the 2006 rate would remain in effect through 2012.

Using the above referenced scenario, although there are two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District in the period 2011-2013, Erie is not entitled to an Adjustment in the Water Fee in 2013 because the two (2) separate and consecutive determinations of an Event of Non-Cooperation by the District did not occur within any two (2) calendar year period. Therefore, in 2013, the Water Fee would increase to the rate that would have been in effect in 2013 if the Adjustments in the Water Fee had not been applied for each of the prior six years.

Further, using the same scenario above, if the second determination of an Event of Non-Cooperation by the District in 2006 was, instead, a determination of an Event of Non-Cooperation by Erie, then the first Adjustment in the Water Fee would not occur until 2007 as the determination of an Event of Non-Cooperation by Erie in 2006 bars "use" of the first determination of an Event of Non-Cooperation by the District in 2006 as said determination is no longer a consecutive determination with the second determination of an Event of Non-Cooperation by the District in that same year.

- 4. AGREEMENTS IN FULL FORCE AND EFFECT.** Except as amended by this Amendment, all terms and conditions of the Reservoir Operating Agreement and the Letter Agreement (collectively, the "Agreements") shall remain unchanged. In the event of any inconsistency between the remaining terms and conditions of the Agreements and this Amendment, the remaining terms and conditions of the Agreements shall be interpreted so as to give effect, to the maximum extent possible, to the provisions contained in this Amendment.

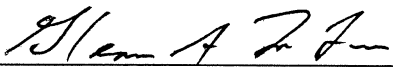
5. **HEADINGS.** The various headings used in this Amendment are inserted for convenience of reference only, do not form a part of this Amendment, and shall not affect the meaning or interpretation of this Amendment or any provision thereof.

6. **REFERENCES TO AGREEMENTS.**

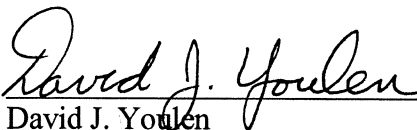
- a. From and after the date hereof: (i) all references in the Reservoir Operating Agreement to “this Agreement,” “hereof,” “herein,” or similar terms and (ii) all references to the Reservoir Operating Agreement in each agreement, instrument and other document executed or delivered in connection with the Reservoir Operating Agreement, shall mean and refer to the Reservoir Operating Agreement as amended by this Amendment.
- b. From and after the date hereof: (i) all references in the Letter Agreement to “this Letter Agreement,” “hereof,” “herein,” or similar terms and (ii) all references to the Letter Agreement in each agreement, instrument and other document executed or delivered in connection with the Letter Agreement, shall mean and refer to the Letter Agreement as amended by this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed by their respective duly authorized officers or representatives as of the date indicated above.

For and on behalf of:
HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT

By: 
Glenn A. LaFave
Executive Director

For and on behalf of:
ERIE BOULEVARD HYDROPOWER,
L.P.

By: 
David J. Youlen
Vice President