

THIRD AMENDMENT TO RESERVOIR OPERATING AGREEMENT

This Amendment to Reservoir Operating Agreement, dated as of June 29, 2022, 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 575 Broadway, Third Floor, Albany, New York 12207 (the “District”), and **ERIE BOULEVARD HYDROPOWER, L.P.**, a Delaware limited partnership, having offices at 200 Liberty Street, 14th Floor, New York, New York 10281 (“Erie”).

WITNESSETH:

WHEREAS, the parties have entered into that certain Reservoir Operating Agreement, dated as of July 1, 2003 (the “*Reservoir Operating Agreement*”), that certain Amendment to Reservoir Operating Agreement, dated as of May 19, 2006 (the “*Amendment to Reservoir Operating Agreement*”), and that certain Second Amendment to Reservoir Operating Agreement, dated June 16, 2021 (the “*Second Amendment to Reservoir Operating Agreement*”);

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, 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, the Amendment to Reservoir Operating Agreement and the Second Amendment to Reservoir Operating Agreement.
2. **AMENDMENTS TO RESERVOIR OPERATING AGREEMENT** as amended on May 19, 2006 and June 16, 2021. 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 months. Accordingly, Section 3.1, as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement, and, as further amended by the June 16, 2021 Amendment to Reservoir Operating Agreement, 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 December 31, 2022 unless terminated as of an earlier date as otherwise provided herein. The District and Erie hereby agree to continue to meet to discuss the extension or renegotiation of this Agreement.

- b. **Notices.** The Notice provision shall be updated to update contact information. Accordingly, Section 7.1 shall be deleted in its entirety and the following substituted in lieu thereof:

Notices. Unless otherwise specified in this Agreement, it shall be sufficient service or giving of any notice, request, certificate, demand or other communication for purposes hereof if the same shall be sent by (and all notices required to be given by mail shall be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by email or other electronic means which produces evidence of transmission, confirmed by first class mail, and in each case shall be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission.

Unless a different address is given by any party as provided in this Section 7.1, all such communications shall be addressed as follows:

To the District: 575 Broadway, Third Floor
Albany, New York 12207
Attn.: John C. Callaghan, Executive Director

To Erie: 200 Liberty Street, 14th Floor
c/o Brookfield Renewable
New York, New York 10281
Attn: General Counsel – U.S.

By Notice given under this Agreement, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent.

- c. **Documents Which Constitute an Integral Part of this Agreement.** The following documents shall constitute integral parts of this agreement. Accordingly, Section 7.17 will be added to read as follows:

Documents Which Constitute an Integral Part of this Agreement The following documents shall constitute integral parts of this agreement, the whole to be collectively known and referred to as the Agreement Documents or the Contract, and in the case of discrepancies among any parts of the Agreement Documents, preference shall be given in the following order:

Appendix A: Standard Clauses for NYS Contracts, Dated October 2019
Agreement (later dates taking precedence over earlier dates)

June 29, 2022 (Third Amendment to ROA)

June 16, 2021 (Second Amendment to ROA)

May 19, 2006 (Amendment to ROA)

July 1, 2003 (ROA)

Vendor Responsibility Questionnaire, Profile, & Instructions

Affirmation of Understanding of, and Agreement Pursuant to State Finance Law §139-j(3) and §139-j(6)(b)

Certification of Compliance with State Finance Law §139-k(5)

Offeror Disclosure of Prior Non-Responsibility Determinations

Insurance Certificates

Sexual Harassment Prevention Certification Pursuant to State Finance Law 139-l

Non-Collusive Bidding Certification pursuant to State Finance Law §139-d

Resolution Accompanying Proposal (For Corporate Offerors)

Certificate of Acknowledgment (Corporation)

- d. **Waiver of Immunity** The following clause shall constitute an integral part of this agreement. Accordingly, Section 7.18 will be added to read as follows:

Waiver of Immunity. The contractor hereby agrees to the provisions of Section 139-a and 139-b of the New York State Finance Law which requires that upon the refusal of a person, when called before a grand jury to testify concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a

public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract,

(a) such person, and any firm, partnership or corporation of which he is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with New York State or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and

(b) any and all contracts made with the State of New York or any public department, agency or official thereof, since the effective date of this law, by such person, and by any firm, partnership, or corporation of which he is a member, partner, director or officer may be canceled or terminated by New York State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State of New York for goods delivered or work done prior to the cancellation or termination shall be paid.

- e. **Non-Discrimination** The following clause shall constitute an integral part of this agreement. Accordingly, Section 7.19 will be added to read as follows:

Non-Discrimination Clause. During the performance of this Contract, the Contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color or national origin. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retaining, including apprenticeship and on-the-job training.
- (b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Commission for Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color or national origin and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commission for Human Rights of such failure or refusal.
- (c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commission for Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.

- (d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color or national origin.
- (e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and Civil Rights Law, will furnish all information and reports deemed necessary by the State Commission for Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Commission for Human Rights, the Attorney General and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commission for Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfies the State Commission for Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commission for Human Rights after conciliation efforts by the Commission have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commission, notice thereof has been given to the contractor and an opportunity has been afforded him to be heard publicly before three members of the Commission. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by Law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

3. **AGREEMENT IN FULL FORCE AND EFFECT.** Except as amended by this Third Amendment to Reservoir Operating Agreement, all terms and conditions of the Reservoir Operating Agreement, as amended by the May 19, 2006 Amendment to Reservoir Operating Agreement and the June 16, 2021 Second Amendment to Reservoir Operating Agreement, 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 Agreement shall be interpreted so as to give effect, to the maximum extent possible, to the provisions contained in this Third Amendment.
4. **HEADINGS.** The various headings used in this Third Amendment are inserted for convenience of reference only, do not form a part of this Third Amendment, and shall not affect the meaning or interpretation of this Third Amendment or any provision thereof.

5. **REFERENCES TO AGREEMENTS.** 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 the May 19, 2006 Amendment to Reservoir Operating Agreement, the June 16, 2021 Second Amendment to Reservoir Operating Agreement and this Third Amendment to Reservoir Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Third 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: 

Name: John C. Callaghan
Title: Executive Director

For and on behalf of:

ERIE BOULEVARD HYDROPOWER, L.P.

By: 

Name: Stephen Gallagher
Title: Chief Commercial Officer

By: 

Name: Thomas Deedy
Title: Chief Operating Officer