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**Regular Session of the
Niagara Falls Water Board
January 14, 2019 5:00 PM at
Michael C. O’Laughlin Municipal Water Plant**

1. Attendance and Preliminary Matters

a. Forster ___ Kimble ___ Larkin ___ Leffler ___ O’Callaghan ___

b. Letters and Communications

i. Letter from Executive Director – Declining to Renew
Employment Agreement

c. Public Comment (All speakers must register with the Chairperson
prior to roll call and are limited to three minutes per person – total
time for all speakers may not exceed one hour)

d. Approval of Minutes from December 10, 2018

e. Approval of Minutes from December 17, 2018

2. Executive Director

3. Director of Operations

a. Permission to Advertise for Bids – WWTP Lab Renovation

4. Superintendent

a. Bollier Avenue Project Update

5. Engineering

6. Personnel Items/Director of Administrative Services

a. Personnel Actions and Reports

7. Information Technology (IT) Dept.

8. Financial Reports – Director of Financial Services

9. Reports

a. Questions Regarding O&M Report for December (if any)

b. Safety

10. General Counsel and Secretary

a. RFP for Water and Sewer Service Line Protection Program

11. From the Chairman

12. Resolutions

**2019-01-001 – ADOPTING NYS RECORDS RETENTION AND
DISPOSITION SCHEDULE MI-1**

2019-01-002 – APPOINTING RECORDS MANAGEMENT OFFICER

**2019-01-003 – APPOINTING CPL AS RATE CONSULTANT AND
CONSULTING ENGINEER**

a. CPL Proposal dated December 27, 2018

2019-01-004 – APPROVING DEDUCT METER – RELIANCE FLUID TECHNOLOGIES LLC

2019-01-005 – CONTRACT EXTENSION FOR THE PURCHASE OF REPLACEMENT POWER FROM THE POWER AUTHORITY OF THE STATE OF NEW YORK

- a. Agreement for the Sale of Replacement Power

2019-01-006 – REPAIR OF 16-INCH PIPING AT GORGE PUMPING STATION

- a. Mollenberg-Betz, Inc., quote dated December 14, 2018

2019-01-007 – SYNCHRONOUS ELECTRIC MOTOR FOR INTERMEDIATE PUMP

- a. Volland Electric Equipment Co., quote dated December 19, 2018

2019-01-008 – EXEMPT AND HOURLY EMPLOYEES NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT TO USE TIME MANAGEMENT SYSTEM EFFECTIVE IMMEDIATELY

2019-01-009 – WATER TREATMENT PLANT TRANSFER SWITCH SERVICE

- a. GE Zenith Controls, Inc., quote dated December 10, 2018

13. Unfinished Business

14. New Business & Additional Items for Discussion

15. Executive Session (if needed)

16. Adjournment of Meeting

January 11, 2019

Hon. Daniel O'Callaghan, Chairman
Niagara Falls Water Board
5818 Buffalo Avenue
Niagara Falls, New York 14302

Dear Chairman O'Callaghan:

Pursuant to the terms of my Employment Agreement dated June 19, 2017, this letter is to inform you and the Board of Directors that I do not intend to renew my agreement upon its expiration on March 31, 2019. The termination is effective on that date. I trust by providing such notice the Niagara Falls Water Board will have sufficient time to obtain a replacement Executive Director.

I sincerely appreciate the opportunity that my position as Executive Director has provided for me to lead the Niagara Falls Water Board. I am proud of this organization's achievements over the last two years, and am confident that I will be leaving this organization better prepared, more efficient, and more compliant than when I began my service. However, effective March 31, 2019, I am ready to step back from Executive Director position and to explore new opportunities. My understanding is that Mr. Sean W. Costello will advise the Board's preference as to my day to day activities during the period through March 31, 2019.

By your acceptance of this letter, as indicated below, you agree that the Niagara Falls Water Board will respond to any enquiries about my employment by confirming my job title and dates of employment.

I understand that the process of identifying and hiring my permanent replacement may take a lengthy period, and that the Board may need to appoint an interim Executive Director. I am ready, willing, and able to assist in any capacity as directed by the Board through March 31, 2019, the expiration of my employment contract term. Your signature below signifies that you have accepted my resignation effective March 31, 2019. My understanding is that both parties will abide by the terms of the Employment Agreement.

For reference, I have returned my telephone, ipad, and access card to Mr. Costello. As stated above I am ready, willing and able to continue working through the balance of the term of the Employment Agreement but will need my telephone, ipad, and access card to successfully pursue my obligations under the Employment Agreement.

I wish you and the other board members, as well as all of the employees, consultants and other contractors that I have been privileged to work with, the very best in the future.

With sincere appreciation,

/s/ Rolfe Porter
Rolfe Porter

Chairman NFWB



**Minutes of Public Hearing on 2019 Rates, Fees, and Other Charges
and Budget Meeting
Niagara Falls Water Board
December 10, 2018 5:00 PM at
Michael C. O’Laughlin Municipal Water Plant**

1. Call to Order & Pledge of Allegiance

2. Roll Call: *Meeting was called to order at 5:00 p.m.*

Larkin P Leffler P Kimble P Forster P
O’Callaghan P

3. Public Hearing

a. Introduction by Chairperson

b. Presentation by rate consultants Drescher & Malecki LLP

Dreher & Malecki led a presentation regarding the financial projections and user rates, with their goal of providing independent cash flow estimates sufficient to meet the debt-service coverage ratio (1.15). Their analysis of projected amounts was performed in accordance with historical trends and audited data from the prior years, along with current information and year-to-date actual reports per the financial software.

Dresher & Malecki states what is being proposed is sufficient to cover the debt service and they would not recommend going any lower.

Contractual expenses- consisting of chemicals, sludge removal, utilities, maintenance, insurance, parts and supplies; 2016- \$9.3 million and 2017- \$8.9 million – respectively.

c. Staff and Board Comments

The Board discussed the various reasons for increases in expenses for things like sludge removal, chemicals, settling collective bargaining agreements, and filling

needed vacant positions in 2017 and 2018 from prior years. Debt service also takes a lot of the budget.

Dresher & Malecki stated that the Board should anticipate needing to increase rates next year.

The Director of Financial Services discussed efforts to cut expenses, and efforts to have a 0% increase. Ultimately, the 2% increase will add about \$8 per year to the average ratepayer's bill.

d. Public Comments/Oral and Written, if Any (All speakers must register with the Chairperson prior to roll call and are limited to three minutes per person.)

Ruth Knepp, 17th St., Niagara Falls NY, 14304 states that she has been a resident of Niagara Falls since 1980 and believes that she pays too much for water service.

Terri Kline, Cayuga Dr., Niagara Falls NY, 14304, expressed concern about the sewer rate and compared NFWB sewer charges with other municipalities. She questioned several lines in the budget, including undesignated services and supplies, consultants, and advertising.

Robert Dusen, Falls St., Niagara Falls NY, 14304, questioned the budgeted revenue from the Town of Niagara. Mr. Dusen states that he believes minimum charges are unfair, giving the example of residents who do not live in the City year-round.

4. Motion to Close Public Hearing and Open Budget Meeting

Motion to close the public hearing and open budget meeting at 5:39 p.m.

Larkin __Y__ Leffler __Y__ Kimble __Y__ Forster __Y__ O'Callaghan __Y__

Ms. Larkin questioned undesignated services line. Ms. Walker explained that these figures come from department heads, and gave examples of possible charges against this line and consultant budget lines.

5. Adjournment (Water Board Working Session to Follow)

Motion to adjourn at 5:48 p.m.

Larkin __Y__ Leffler __Y__ Kimble __Y__ Forster __Y__ O'Callaghan __Y__



**Minutes of Regular Session of the
Niagara Falls Water Board
December 17, 2018 5:00 PM at
Michael C. O’Laughlin Municipal Water Plant**

1. Attendance and Preliminary Matters

Meeting was called to order at 5:49 p.m.

a. Forster P Kimble P Larkin P Leffler P O’Callaghan P

b. Letters and Communications

There were no letters and/or communications to discuss at this time.

c. **Public Comment** (All speakers must register with the Chairperson prior to roll call and are limited to three minutes per person – total time for all speakers may not exceed one hour)

Jerald Gambino spoke in front of the Board regarding his water bill from his property located at 2460 Grand Ave. Niagara Falls, NY 14304, which he has owned for 12 years. Mr. Gambino states he has been having an issue with his current tenants, explaining he was unaware that there were an additional 5 tenants living there, causing a significant increase in water consumption. Mr. Gambino states this issue bled into multiple quarters. His past 4 waters bills totaled \$1,857.00, while his average quarterly bill is \$158.00, annually \$633.00. Mr. Gambino states that the NFWB’s adjustment program formula is flawed because it does not take into account problems that are divided between two quarters. Mr. Gambino is seeking a \$1,200 adjustment.

Terri Kline, Cayuga Dr., Niagara Falls, NY 14304 spoke in front of the Board regarding the current contract with the NFWB and the Town of Niagara that went into effect in 2015. Ms. Kline is interested to know if the NFWB is receiving sewer revenue from the County. Ms. Kline notes that a City resident pays a higher rate per gallon for sewer service than is charged to the Town of Niagara. Ms. Kline questioned the location of monitoring points for Town of Niagara flow, and whether high-season flows from the Fashion Outlets are captured.

Jamil Ahmed spoke regarding his water bill from his property located at 1162 North Ave. Mr. Ahmed is seeking a bill adjustment from the Board.

d. Approval of Minutes from November 26, 2018

Motion by Mr. Forster and seconded by Ms. Kimble to approve the meeting minutes.

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler abstain __O'Callaghan __Y__

2. Executive Director

The Executive Director had nothing new to discuss at this time.

3. Director of Operations

The Director of Operations had nothing new to discuss at this time.

4. Superintendent

The Superintendent had nothing new to discuss at this time.

5. Engineering

Engineering discussed the status of the WWTP flooding protective measures project, including revised cost projections and FEMA funding level.

6. Personnel Items/Director of Administrative Services

The Director of Administrative Services provided an update on the document scanning project and a vacant team leader position.

7. Information Technology (IT) Dept.

There was nothing new to discuss at this time.

8. Financial Reports – Director of Financial Services

The Director of Financial Services has nothing new to discuss, but would answer any questions regarding the budget resolutions when they are considered.

9. Reports

a. Questions Regarding O&M Report for November (if any)

b. Safety

There were no questions regarding the O&M Report at this time.

There were no recordable/reportable injuries to discuss at this time.

10. General Counsel and Secretary

General Counsel noted that there will be a matter for discussion in executive session (see below).

11. From the Chairman

The Chairman has nothing new to discuss at this time.

Executive Session

Motion by Mr. Forster and seconded by Ms. Kimble to enter into executive session at 5:29 p.m. to discuss matters leading to the employment or removal of a particular person.

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

Motion by Ms. Larkin and seconded by Ms. Leffler to adjourn from executive session at 5:51 p.m.

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

12. Resolutions

**A-1-2018-12-001 -- BUDGET MODIFICATION TO ADDRESS
CALCULATION ERROR WITH RESPECT TO PERSONNEL COSTS**

Motion by Ms. Kimble and seconded by Ms. Leffler to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

**A-2-2018-12-001 -- BUDGET MODIFICATION TEMPORARY
PART-TIME DOCUMENT COORDINATOR**

Ms. Larkin questioned whether this will be replaced by a full-time position in 2019. Mr. Perry stated that the plan as of now is to use the temporary position to get the document scanning project done and to get the records in order.

Motion by Ms. Kimble and seconded by Mr. Forster to approve

Forster __Y__ Kimble __Y__ Larkin __N__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 4-1

**A-3-2018-12-001 – BUDGET MODIFICATION PART-TIME
ASSOCIATE COUNSEL**

Ms. Kimble questioned the work performed and why a part-time lawyer is needed with a full-time General Counsel. Mr. Costello provided examples of the work performed. Ms. Kimble and Ms. Larkin asked that it be made clear that the position reports to General Counsel and not to the Board.

Motion by Ms. Forster and seconded by Mr. Larkin to approve

Forster __Y__ Kimble __N__ Larkin __Y__ Leffler __N__ O'Callaghan __Y__

Motion was carried 3-2

2018-12-001 -- ADOPTING 2019 BUDGET

Ms. Larkin and Ms. Leffler felt there are areas where some more reductions could be made.

Motion by Mr. Forster and seconded by Ms. Kimble to approve

Forster __Y__ Kimble __Y__ Larkin __N__ Leffler __N__ O'Callaghan __Y__

Motion was carried 3-2

**2018-12-002 – ESTABLISHING RATES, FEES, AND OTHER CHARGES
EFFECTIVE JANUARY 1, 2019**

a) Schedule A – Revised Rates, Fees, and Other Charges

Motion by Mr. Forster and seconded by Ms. Kimble to approve

Forster __Y__ Kimble __Y__ Larkin __N__ Leffler __N__ O'Callaghan __Y__

Motion was carried 3-2

**2018-12-003 – ESTABLISHING HAULED WASTE CHARGES
EFFECTIVE JANUARY 1, 2019**

Motion by Mr. Forster and seconded by Ms. Kimble to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

**2018-12-004 – TOWN OF NIAGARA CHARGES EFFECTIVE
JANUARY 1, 2019**

a) December 3, 2014 Agreement between NFWB and Town

Motion by Mr. Forster and seconded by Ms. Kimble to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

**2018-12-005 – EXERCISING SECOND YEAR OPTION FOR
EFPR GROUP LLP TO PERFORM ANNUAL EXTERNAL AUDIT FOR
YEAR ENDING DECEMBER 31, 2018**

a) February 13, 2018 Proposal

Motion by Ms. Kimble and seconded by Ms. Larkin to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

**2018-12-006 -- 2019 CLARK PATTERSON LEE PROFESSIONAL
SERVICES AGREEMENT**

a) November 29, 2018 Proposal

Ms. Larkin questioned the rate paid under to CPL's subcontractor for grant writing services as higher than other entities and that CPL also charges for grant services.

Mr. Forster and Mr. O'Callaghan noted that the NFWB has obtained over \$12 Million in grants. Ms. Leffler asked that there be more detail in CPL's bills.

Motion by Mr. Forster and seconded by Mr. O'Callaghan to approve

Forster __Y__ Kimble __Y__ Larkin __N__ Leffler __N__ O'Callaghan __Y__

Motion was carried 3-2

**2018-12-007 -- AWARD BID FOR DEMOLITION OF CHEMICAL TANKS
AT WASTEWATER TREATMENT PLANT**

Motion by Ms. Kimble and seconded by Mr. Forster to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

2018-12-008 -- EXPANDING BILL PAYMENT OPTIONS

Motion by Mr. Forster and seconded by Ms. Kimble to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

**2018-12-009 -- AUTHORIZING SETTLEMENT AGREEMENT WITH
JAMIL AHMED**

Motion by Ms. Kimble and seconded by Mr. Forster to approve

Forster __Y__ Kimble __Y__ Larkin __Y__ Leffler __Y__ O'Callaghan __Y__

Motion was carried 5-0

Walk-on Resolutions

Motion by Ms. Kimble and seconded by Mr. Forster to consider Resolutions 2018-12-010, 2018-12-011 and 2018-12-012, received after the resolution deadline.

Forster Y Kimble Y Larkin Y Leffler Y O'Callaghan Y

2018-12-010 – AUTHORIZING THE DIRECTOR OF FINANCIAL SERVICES TO MAKE CERTAIN CHANGES TO THE BUDGET

Motion by Ms. Kimble and seconded by Mr. Forster to approve

Forster Y Kimble Y Larkin Y Leffler Y O'Callaghan Y

Motion was carried 5-0

2018-12-011 – BUDGET TRANSFER REPORTING

Ms. Walker suggested that this be accomplished through footnotes to the budget monitoring report, not through separate reports to the Board. Mr. Forster noted that the previous resolution does not give the Board notice before transfers, Board has a fiduciary duty to stay apprised of transfers. Ms. Kimble questioned whether the resolution would delay needed work. Mr. O'Callaghan does not want to make more work.

Motion by Mr. Forster and seconded by Ms. Larkin to approve

Forster Y Kimble N Larkin N Leffler N O'Callaghan N

Motion was not carried 1-4

2018-12-012 – AWARD BID FOR SLUDGE DEWATERING POLYMER

Motion by Mr. Forster and seconded by Ms. Larkin to approve

Forster Y Kimble Y Larkin Y Leffler Y O'Callaghan Y

Motion was carried 5-0

13. Unfinished Business

There was no unfinished business to discuss at this time.

14. New Business & Additional Items for Discussion

There was no new business to discuss at this time.

15. Adjournment of Meeting

Motion by Ms. Kimble and seconded by Ms. Larkin to adjourn at 6:28 p.m.

Forster Y Kimble Y Larkin Y Leffler Y O'Callaghan Y

Motion was carried 5-0

**Niagara Falls Water Board
Personnel Actions and Report
Monday, January 7, 2019**

Recommended Moves by the Director of Administrative Services

I. PERSONNEL ACTIONS RECOMMEND TO HIRE				
Line Item Number	Position	Department/Location	Pay Rate or Grade	ADDITIONAL INFORMATION
1.1	Maintenance Worker 3	WWTP/ Inside Maintenance	Grade Level 12 from \$30946 to \$37,842	Russ Vesce replacement

II. RECOMMENDED PROMOTION / MOVE / APPOINTMENT				
Line Item Number	Position	Type of labor move	Change in pay rate or grade	ADDITIONAL INFORMATION
2.1	Safety Coordinator	Additional Duties	\$5,000 ANNUAL STIPEND	Gina will Senia will have the additional duties of Security coordinator added to her current responsibilities

IV. BOARD NOTIFICATION OF OTHER MOVEMENT (CBA BID, MCSB APPOINTMENT, LEGAL STATUS CHANGE)				
Name	Position & type of labor move	Department/Location	Pay Rate or Grade	ADDITIONAL INFORMATION / AUTHORITY

V. OTHER ACTIVITY OTHER PERSONNEL ACTIVITY FOR BOARD NOTIFICATION				
Russell Vesce	Filed for retirement	Maintenance Worker 3	WWTP/ Inside Maintenance	Line item 1 - requested replacement

ADOPTING NYS RECORDS RETENTION AND DISPOSITION SCHEDULE MI-1

WHEREAS, the Niagara Falls Water Board generates and has accumulated a large number of documents, and desires to:

- 1) ensure that records are retained as long as needed for administrative, legal and fiscal purposes;
- 2) ensure that state and federal record retention requirements are met;
- 3) ensure that record series with enduring historical and other research value are identified and retained permanently; and
- 4) encourage and facilitate the systematic disposal of unneeded records; and

WHEREAS, pursuant to Article 57-A of the Arts and Cultural Affairs Law, the NYS Archives, a division of the State Education Department, has developed a records retention and disposition schedule for miscellaneous local governments that is appropriate for Water Board purposes; and

WHEREAS, the Water Board desires formally to adopt this Records Retention and Disposition Schedule MI-1;

* CONTINUED ON NEXT PAGE *

NOW THEREFORE BE IT

RESOLVED, by the Niagara Falls Water Board, that Records Retention and Disposition Schedule MI-1, issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for local government records, is hereby adopted for use by all Water Board officers and employees in legally disposing of valueless records listed therein; and

IT IS FURTHER RESOLVED, that in accordance with Article 57-A:

- a) only those records will be disposed of that are described in Records Retention and Disposition Schedule MI-1 after they have met the minimum retention periods described therein; and
- b) only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods.

Water Board Personnel Responsible for Implementation of this Resolution:

Director of Administrative Services
General Counsel

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to Board

APPOINTING RECORDS MANAGEMENT OFFICER

WHEREAS, the Niagara Falls Water Board has determined to adopt Records Retention and Disposition Schedule MI-1; and

WHEREAS, to successfully manage Water Board records requires the appointment of a records management officer (“RMO”) to be the person responsible for overseeing the Water Board’s records management program; and

WHEREAS, the RMO may delegate portions of the records management program to others; and

WHEREAS, appointment of a RMO is a pre-requisite for grant applications for funding to assist with records management;

NOW THEREFORE BE IT

RESOLVED, that General Counsel hereby is appointed as the Niagara Falls Water Board’s Records Management Officer.

Water Board Personnel Responsible for Implementation of this Resolution:
General Counsel

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O’Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O’Callaghan, Chairperson

Sean W. Costello, Secretary to Board

**APPOINTING CPL AS RATE CONSULTANT
AND CONSULTING ENGINEER**

WHEREAS, the Niagara Falls Water Board is required pursuant to Section 6.2 of its Financing Agreement and Sections 9.8 and 9.9 of its General Revenue Bond Resolution dated May 1, 2003 to procure the professional services of an independent Rate Consultant and independent Consulting Engineer; and

WHEREAS, the Rate Consultant and Consulting Engineer assist and consult with respect to the operating budget and rate setting, financial service monitoring, capital improvement plan development, technical advice and opinions relating to projects or strategies of the Water Board, preparation of a feasibility report for the issuance of bonds, if needed, and an updated continuing disclosure report; and

WHEREAS, Clark Patterson Lee (“CPL”) has presented a proposal dated December 27, 2018 to perform these Rate Consultant and Consulting Engineer services for 2019;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board hereby appoints CPL to provide 2019 Consulting Engineer/Rate Consultant services, pursuant to the terms of CPL’s December 27, 2018 proposal.

Water Board Personnel Responsible for Implementation of this Resolution:

Executive Director

Director of Financial Services

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O’Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O’Callaghan, Chairperson

Sean W. Costello, Secretary to Board

December 27, 2018

Chairman Dan O'Callaghan
Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, NY 14304

Dear Chairman O'Callaghan:

We have appreciated the opportunity to work with you over the last couple of years. As you are aware, we continue to be involved in the planning and development of several projects and initiatives. As we have discussed, we are proposing to be your consulting engineer and rate consultant, as required in your bond resolution and financing agreements approved in 2003, to assist you with Capital Programming and Rate Setting.

Task 1 – Operating Budget and Rate-Setting

The firm shall review the proposed operating budget, adjustments to water rates and sewer rates and the capital improvement program (“CIP”) for the upcoming year as prepared by the staff of the Board in the Fall of each year in preparation for the upcoming fiscal year. The firm shall provide a written opinion to the Board and the Authority regarding: 1) the adequacy of the proposed rates and charges and other sources of revenue to meet the required debt service coverage requirement; 2) the adequacy of the proposed operation and maintenance budget to provide sufficient operation and maintenance of the Board’s assets; and 3) the reasonableness of the proposed CIP to maintain the assets of the Board in reasonable working order and to meet regulatory requirements. A representative of the firm shall assist the Board by presenting its findings and other related information at the Board’s annual public hearing regarding the proposed budget and water and sewer rates. The firm shall carry out all analytical steps necessary to present its findings as described above. The firm shall also develop and update a detailed five year budget forecast to anticipate future rate changes and assure the Board’s capital investment strategies are achievable.

Task 2 – Financial Services during the Fiscal Year

The firm shall provide oversight for the cash flows of the Water, Wastewater & Stormwater System (the “System”) of the Board throughout each fiscal year of the agreement. Such oversight shall include, but not be limited to the following: reviewing reports of cash receipts and disbursements provided by the Board; updating cash flow and debt service coverage projections for each fiscal year on a quarterly basis (if material changes have occurred); advising Board representatives regarding the ability of the Board to meet its debt service coverage obligations for the fiscal year; reviewing the adequacy of moneys in the various funds maintained by the Authority and the Board including the reserve funds and the construction fund; and consulting with Board representatives including the financial advisor throughout the year on matters relating to the cash flows of the System.

Task 3 – CIP Development

The firm shall review the Five-Year CIP which is prepared annually by the staff of the



Board and may be updated from time to time during the year. The firm shall provide its opinion to the Board on the adequacy and prioritization of the CIP for the five year period to maintain the System in good working order, as well as to meet regulatory requirements.

Task 4 – Preparation of a Feasibility Report for the Issuance of Bonds

In each fiscal year in which the Authority issues bonds, the firm shall prepare a feasibility report for inclusion in the Official Statement for the issuance of bonds. The report shall be similar in structure and content to the reports presented in the previous Official Statements of the Authority.

Task 5 - Continuing Disclosure

In each fiscal year in which the Authority does not issue bonds during the period of January 1st to June 30th, the firm shall prepare a Continuing Disclosure Report which presents updated information, where available, in the format presented in the Feasibility Report from the previous bond issue. The intent is not to prepare a complete or new Feasibility Report but rather to provide only information in text and table form to update the findings of the previous Feasibility Report.

We don't have a really good handle on the level of effort that this will take yet as we been negotiating with Drescher & Malecki for the financial services piece of this work and we also have not yet reviewed in detail the existing CIP. However, it is likely a \$60,000-\$80,000 effort. We plan to do this work on an hourly basis, along with subconsultants billed as a pass through under the Agreement that was authorized at the December 2018 meeting.

Thank you for the opportunity to submit our qualifications. I am deeply proud of our ability to provide you with quality service at a fair rate. This is what we do, and we do it well. If you have any questions or require any additional information, please feel free to contact me via email at rhenry@clarkpatterson.com or by phone at 716.852.2100, extension 1048.

Very truly yours,
Clark Patterson Lee

Richard B. Henry III, P.E.
Senior Vice President

APPROVING DEDUCT METER – RELIANCE FLUID TECHNOLOGIES LLC

WHEREAS, Reliance Fluid Technologies LLC (“Reliance”), a division of Superior Lubricants Company Inc., has invested in the production of a new bottled product line at its facility located at 3943 Buffalo Avenue in the City of Niagara Falls; and

WHEREAS, this bottled product accurately can be measured, and no part of the water used on the production line for the product enters the Water Board’s wastewater treatment system; and

WHEREAS, Water Board personnel have inspected the Reliance facility and determined that the product water piping does not connect with any appliance or use that results in water draining or running to the Water Board’s sewers; and

WHEREAS, the Water Board’s Wastewater Regulations at 21 NYCRR 1960.8 provide that “In the event that consumptive use precludes the use of water meter readings for determination of user charges, alternate metering may be substituted on a case-by-case basis pursuant to Water Board review and approval”; and

WHEREAS, because much of the City of Niagara Falls wastewater system includes combined sewers where storm and sanitary flows both are conveyed to the wastewater treatment plant and must be treated, approval of deduct meters is appropriate only when it is possible to verify that no process water will enter the sewer system, either through drains or as runoff; and

WHEREAS, the Water Board has determined that based on the specific facts and circumstances presented in this case a deduct meter is acceptable; and

WHEREAS, the Water Board desires to condition its approval of the deduct meter on reasonable conditions;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board hereby approves a deduct meter for Reliance Fluid Technologies LLC at 3943 Buffalo Avenue, subject to the following conditions, to be agreed to in writing by Reliance Fluid Technologies, LLC:

- (1) Authority for the deduct meter is personal to Reliance and any successor company must receive separate Water Board approval for a deduct meter;
- (2) Reliance will pay all costs associated with installing a deduct meter that is remotely-readable by the Water Board and any required backflow devices and other appurtenances that meet the requirements of Water Board staff;
- (3) No changes to the deduct meter or any pipes connected to that meter may be made without the Water Board’s written approval;
- (4) Reliance must permit inspections of records as required to verify that production quantities match deduct meter readings;
- (5) Reliance must agree to allow the Water Board to inspect its facility at any time;
- (6) Reliance must pay a one-time fee of \$500 to cover the Water Board’s costs associated with processing this request, inspecting, and approving the installation;

- (7) Reliance must pay a quarterly charge of \$150 to cover the cost of reading and processing the deduct meter readings and inspections; and

IT IS FURTHER RESOLVED, that after a deduct meter installation has been inspected and approved by the Water Board, and so long as said meter and its remote reader are functioning properly, the Water Board will read the deduct meter at the same time as it reads the property's water meter. The amount of water passing through the deduct meter during the applicable billing period shall be deducted from the total water usage on the premises for the purpose of calculating the Reliance's sewage charge for the same period. No deduct meter credit adjustment will be made for, or during, any period when any of the above mentioned components are out of service for repair or not properly functioning in any way.

Water Board Personnel Responsible for Implementation of this Resolution:

Executive Director

General Counsel

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to Board

**CONTRACT EXTENSION FOR THE PURCHASE OF
REPLACEMENT POWER FROM
THE POWER AUTHORITY OF THE STATE OF NEW YORK**

WHEREAS, the Niagara Falls Water Board (“Water Board”) has benefitted from an existing contract with the Power Authority of the State of New York (“Power Authority”) for the purchase of an allocation of low-cost Replacement Power; and

WHEREAS, the Power Authority has requested that the Water Board agree to a new agreement for the sale of replacement power which contains certain updated terms desired by the Power Authority; and

WHEREAS, the parties mutually desire to extend the Water Board’s allocation of low-cost power; and

WHEREAS, the Power Authority has agreed to extend the term of the Water Board’s allocation of low-cost power through December 31, 2028; and

WHEREAS, the Power Authority has further agreed to adjust the allocations for each Water Board facility receiving replacement power to allow the Water Board to take the greatest possible advantage of this low-cost power; and

WHEREAS, the Water Board and Power Authority desire to enter into a new agreement in advance of expiration of the existing allocation agreement for these reasons and in order to promote commercial and financial certainty and long-term planning by each of the parties; and

WHEREAS, the new agreement shall supersede and terminate the prior agreement;

* CONTINUED ON NEXT PAGE *

NOW THEREFORE BE IT

RESOLVED, that on behalf of the Niagara Falls Water Board, its Executive Director hereby is authorized to enter into a new agreement for the purchase of Replacement Power from the Power Authority, which, among other terms, shall extend the term of the Water Board's allocation of low-cost replacement power through December 31, 2028.

Water Board Personnel Responsible for Implementation of this Resolution:

Executive Director

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to Board

POWER AUTHORITY

OF THE

STATE OF NEW YORK

30 South Pearl Street
10th Floor
Albany, New York 12207-3425

AGREEMENT FOR THE SALE
OF EXPANSION POWER AND/OR REPLACEMENT POWER

Niagara Falls Water Board

The POWER AUTHORITY OF THE STATE OF NEW YORK (“Authority”), created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title I of Article V of the New York Public Authorities Law (“PAL”), having its office and principal place of business at 30 South Pearl Street, 10th Floor, Albany, New York 12207-3425, hereby enters into this Agreement for the Sale of Expansion Power and/or Replacement Power (“Agreement”) with Niagara Falls Water Board (“Customer”) with offices and principal place of business at 5815 Buffalo Avenue, Niagara Falls, NY 14304. The Authority and the Customer are from time to time referred to in this Agreement as “Party” or collectively as “Parties” and agree as follows:

RECITALS

WHEREAS, the Authority is authorized to sell hydroelectric power produced by the Niagara Power Project, Federal Energy Regulatory Commission (“FERC”) Project No. 2216, including hydropower known as Expansion Power (“EP”) and Replacement Power (“RP”) to qualified businesses in accordance with PAL § 1005(5) and (13);

WHEREAS, prior to the Effective Date, the Authority has provided the Customer with electric service in accordance with one or more written agreements (collectively, “Prior Agreement”) to enable the Customer to receive Electric Service for one or more allocations of EP and/or RP awarded by the Authority;

WHEREAS, the Customer has requested that its EP and/or RP allocation(s) be extended, and has offered to continue to make specific commitments relating to, among other things, the creation and/or retention of jobs, capital investments and adoption of energy efficiency measures at the Facility, in exchange for such extension;

WHEREAS, the Authority’s Board of Trustees (“Trustees”) approved extension of the Customer’s existing allocation(s) (defined in Article I of this Agreement as the “Allocation”), subject to agreement on the terms and conditions for the sale of the Allocation and related matters;

WHEREAS, the Parties have reached an agreement on the terms and conditions applicable for the sale of the Allocation for an extended term as provided for in this Agreement;

WHEREAS, the Parties desire to enter into this Agreement in advance of expiration of the Allocation in order to promote commercial and financial certainty and long term planning by each of the Parties;

WHEREAS, the Parties intend for this Agreement to supersede and terminate the Prior Agreement and provide the terms and conditions for the sale of the Allocation, except as otherwise provided in this Agreement with respect to certain supplemental commitments of the Customer under the Prior Agreement;

WHEREAS, execution of this Agreement shall cause service hereunder to be subject to the rates and other terms and conditions of Service Tariff No. WNY-2 as provided for in this Agreement;

WHEREAS, the Authority has complied with requirements of PAL § 1009, and has been

authorized to execute the Agreement.

NOW, THEREFORE, in consideration of mutual covenants, terms, and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties do hereby mutually covenant and agree as follows:

ARTICLE I **DEFINITIONS**

When used with initial capitalization, whether singular or plural, the following terms, as used in this Agreement, shall have the meanings as set forth below. When used with initial capitalization, whether singular or plural, terms defined in schedules or appendices to this Agreement shall have the meanings set forth in such schedules or appendices.

“Adverse Water Condition” means any event or condition, including without limitation a hydrologic or hydraulic condition, that relates to the flow, level, or usage of water at or in the vicinity of the Project and/or its related facilities and structures, and which prevents, threatens to prevent, or causes the Authority to take responsive action that has the effect of preventing, the Project from producing a sufficient amount of energy to supply the full power and energy requirements of firm power and firm energy customers who are served by the Project.

“Agreement” means this Agreement, and unless otherwise indicated herein, includes all schedules, appendices and addenda thereto, as the same may be amended from time to time.

“Allocation” refers to the allocation(s) of EP and/or RP awarded to the Customer as specified in Schedule A.

“Alternative REC Compliance Program” has the meaning provided in Schedule E.

“Annual Capital Investment Commitment” has the meaning set forth in Schedule B.

“Annual CI Expenditures” has the meaning set forth in Schedule B.

“Base Employment Level” has the meaning set forth in Schedule B.

“Contract Demand” is as defined in Service Tariff No. WNY-2.

“Customer-Arranged Energy” means energy that the Customer procures from sources other than the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment.

“Effective Date” means the date that this Agreement is fully executed by the Parties.

“Electric Service” is the Firm Power and Firm Energy associated with the Allocation and sold by the Authority to the Customer in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.

“Energy Services” has the meaning set forth in Article V of this Agreement.

“Expansion Power” (or “EP”) is 250 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Expansion Project” has the meaning set forth in Section IV.3.a of this Agreement.

“Expansion Project Capital Investment Commitment” has the meaning set forth in Schedule B.

“Facility” means the Customer’s facilities as described in Schedule A to this Agreement.

“Firm Power” is as defined in Service Tariff No. WNY-2.

“Firm Energy” is as defined in Service Tariff No. WNY-2.

“FERC” means the Federal Energy Regulatory Commission (or any successor organization).

“FERC License” means the first new license issued by FERC to the Authority for the continued operation and maintenance of the Project, pursuant to Section 15 of the Federal Power Act, which became effective September 1, 2007 after expiration of the Project’s original license which became effective in 1957.

“Hydro Projects” is a collective reference to the Project and the Authority’s St. Lawrence-FDR Project, FERC Project No. 2000.

“International Joint Commission” or “IJC” refers to the entity with responsibility to prevent and resolve disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The IJC rules upon applications for approval of projects affecting boundary or transboundary waters and may regulate the operation of these projects.

“Load Reduction” has the meaning set forth in Section IX.6 of this Agreement.

“Load Serving Entity” (or “LSE”) means an entity designated by a retail electricity customer (including the Customer) to provide capacity, energy and ancillary services to serve such customer, in compliance with NYISO Tariffs, rules, manuals and procedures.

“Metering Arrangement” has the meaning set forth in Section II.8 of this Agreement.

“NYEM” means the New York Energy Manager, an energy management center owned and operated by the Authority.

“NYEM Agreement” means a written agreement between the Authority and the Customer providing for the Facility’s enrollment and Customer’s participation in NYEM.

“NYEM Participation” has the meaning specified in Schedule B of this Agreement.

“NYISO” means the New York Independent System Operator or any successor organization.

“NYISO Charges” has the meaning set forth in Section VII.3 of this Agreement.

“NYISO Tariffs” means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, as such tariffs are modified from time to time, or any successor to such tariffs.

“Planned Hydropower Curtailment” means a temporary reduction in Firm Energy to which the Customer is entitled to receive under this Agreement made by the Authority in response to an anticipated or forecasted Adverse Water Condition.

“Physical Energy Audit” or “Audit” means a physical evaluation of the Facility in a manner approved by the Authority that includes at a minimum the following elements: (a) an assessment of the Facility’s energy use, cost and efficiency which produces an energy utilization index for the Facility (such as an Energy Use Intensity or Energy Performance Indicator); (b) a comparison of the Facility’s index to indices for similar buildings/facilities; (c) an analysis of low-cost/no-cost measures for improving energy efficiency; (d) a listing of potential capital improvements for improving energy consumption; and (e) an initial assessment of potential costs and savings from such measures and improvements.

“Prior Agreement” has the meaning set forth in the recitals to this Agreement.

“Project” means the Niagara Power Project, FERC Project No. 2216.

“Replacement Power” (or “RP”) is 445 MW of Firm Power and associated Firm Energy from the Project eligible to be allocated by the Authority for sale to businesses pursuant to PAL § 1005(13).

“Reporting Year” means the yearly interval that the Authority uses for reporting, compliance and other purposes as specified in this Agreement. The Reporting Year for this Agreement is from January 1 through December 31, subject to change by the Authority without notice.

“Rolling Average” has the meaning set forth in Schedule B.

“Rules” are the applicable provisions of Authority’s rules and regulations (Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as may be modified from time to time by the Authority.

“Service Information” has the meaning set forth in Section II.12 of this Agreement.

“Service Tariff No. WNY-2” means the Authority’s Service Tariff No. WNY-2, as may be modified from time to time by the Authority, which contains, among other things, the rate

schedule establishing rates and other commercial terms for sale of Electric Service to Customer under this Agreement.

“Schedule A” refers to the Schedule A entitled “Expansion Power and/or Replacement Power Allocations” which is attached to and made part of this Agreement.

“Schedule B” refers to the Schedule B entitled “Supplemental Expansion Power and/or Replacement Power Commitments” which is attached to and made part of this Agreement, including any appendices attached thereto.

“Schedule C” refers to the Schedule C entitled “Takedown Schedule” which is attached to and made part of this Agreement.

“Schedule D” refers to the Schedule D entitled “Zero Emission Credit Charge” which is attached to and made part of this Agreement.

“Schedule E” refers to the Schedule E entitled “Monthly Renewable Energy Credit Charge” which is attached to and made part of this Agreement.

“Substitute Energy” means energy that is provided to the Customer by or through the Authority for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned Hydropower Curtailment or an Unplanned Hydropower Curtailment.

“Takedown” means the portion of the Allocation that Customer requests to be scheduled for a specific period as provided for in Schedule C, if applicable.

“Taxes” is as defined in Service Tariff No. WNY-2.

“Unforced Capacity” (or “UCAP”) means the electric capacity required to be provided by LSEs to serve electric load as defined by the NYISO Tariffs, rules, manuals and procedures.

“Unplanned Hydropower Curtailment” means a temporary reduction in the amount of Firm Energy to which the Customer is entitled to receive under this Agreement due to Adverse Water Condition that the Authority did not anticipate or forecast.

“Utility Tariff” means the retail tariff(s) of the Customer’s local electric utility filed and approved by the PSC applicable to the delivery of EP and/or RP.

ARTICLE II **ELECTRIC SERVICE**

1. The Authority shall make available Electric Service to enable the Customer to receive the Allocation in accordance with this Agreement, Service Tariff No. WNY-2 and the Rules.
2. The Customer shall not be entitled to receive Electric Service under this Agreement for any EP and/or RP allocation unless such EP and/or RP allocation is identified in Schedule A.

3. The Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation specified in Schedule A. If Schedule C specifies a Takedown Schedule for the Allocation, the Authority will provide, and the Customer shall accept and pay for, Electric Service with respect to the Allocation in accordance with such Takedown Schedule.
4. The Authority shall provide UCAP in amounts necessary to meet the Customer's NYISO UCAP requirements associated with the Allocation in accordance with the NYISO Tariffs. The Customer shall be responsible to pay the Authority for such UCAP in accordance with Service Tariff No. WNY-2.
5. The provision of Electric Service associated with the Allocation is an unbundled service separate from the transmission and delivery of power and energy to the Customer. The Customer acknowledges and agrees that Customer's local electric utility, not the Authority, shall be responsible for delivering the Allocation to the Facility specified in Schedule A in accordance with the applicable Utility Tariff(s).
6. The Contract Demand for the Customer's Allocation may be modified by the Authority if the amount of Firm Power and Firm Energy available for sale as EP or RP from the Project is modified as required to comply with any ruling, order, or decision of any regulatory or judicial body having jurisdiction, including but not limited to FERC. Any such modification will be made on a pro rata basis to all EP and RP customers, as applicable, based on the terms of such ruling, order, or decision.
7. The Contract Demand may not exceed the Allocation.
8. The Customer's Facility must be metered by the Customer's local electric utility in a manner satisfactory to the Authority, or another metering arrangement satisfactory to the Authority must be provided (collectively, "Metering Arrangement"). A Metering Arrangement that is not satisfactory to the Authority shall be grounds, after notice to the Customer, for the Authority to modify, withhold, suspend, or terminate Electric Service to the Customer. If a Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination that it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. After commencement of Electric Service, the Customer shall notify the Authority in writing within thirty (30) days of any alteration to the Facility's Metering Arrangement, and provide any information requested by the Authority (including Facility access) to enable the Authority to determine whether the Metering Arrangement remains satisfactory. If an altered Metering Arrangement is not made to conform to the Authority's requirements within thirty (30) days of a determination it is unsatisfactory, the Authority may modify, withhold, suspend, or terminate Electric Service on at least ten (10) days' prior written notice to the Customer. The Authority may, in its discretion, waive any of the requirements provided for in this Section in whole or in part where in the Authority's judgment, another mechanism satisfactory to the Authority can be implemented to enable the Authority to receive pertinent, timely and accurate information relating to the Customer's energy consumption and demand and render bills to the Customer for all fees, assessments and charges that become due in accordance with this Agreement, Service Tariff No. WNY-2, and the Rules.

9. The Customer consents to the exchange of information between the Authority and the Customer's local electric utility pertaining to the Customer that such parties determine is necessary to provide for the allocation, sale and delivery of the Allocation to the Customer, the proper and efficient implementation of the EP and/or RP program, billing related to Electric Service, and/or the performance of such parties' obligations under any contracts or other arrangements between them relating to such matters. In addition, the Customer agrees to complete such forms and consents that the Authority determines are necessary to effectuate such exchanges of information.
10. The provision of Electric Service by the Authority shall be dependent upon the existence of a written agreement between the Authority and the Customer's local electric utility providing for the delivery of the Allocation on terms and conditions that are acceptable to the Authority.
11. The Customer understands and acknowledges that the Authority may from time to time require the Customer to complete forms, execute consents, and provide information (collectively, "Service Information") that the Authority determines is necessary for the provision of Electric Service, the delivery of the Allocation, billing related to Electric Service, the effective administration of the EP and/or RP programs, and/or the performance of contracts or other arrangements between the Authority and the Customer's local electric utility. The Customer's failure to provide Service Information on a timely basis shall be grounds for the Authority in its discretion to modify, withhold, suspend, or terminate Electric Service to the Customer.

ARTICLE III

RATES, TERMS AND CONDITIONS

1. Electric Service shall be sold to the Customer in accordance with the rates, terms and conditions provided for in this Agreement, Service Tariff No. WNY-2 and the Rules. The Authority agrees to waive the Minimum Monthly Charge set forth in Service Tariff No. WNY-2 for a period up to one (1) year upon written request from the Customer that is accompanied by information that demonstrates to the Authority's satisfaction a short-term reduction or interruption of Facility operations due to events beyond the Customer's control. The Customer shall provide such information that the Authority requests during the period of any such waiver to enable the Authority to periodically evaluate the ongoing need for such waiver.
2. If the Authority at any time during the term of this Agreement enters into an agreement with another customer for the sale of EP or RP at power and energy rates that are more advantageous to such customer than the power and energy rates provided in this Agreement and Service Tariff No. WNY-2, then the Customer, upon written request to the Authority, will be entitled to such more advantageous power and energy rates in the place of the power and energy rates provided in this Agreement and Service Tariff No. WNY-2 effective from the date of such written request, provided, however, that the foregoing provision shall not apply to:

- a. any Prior Agreement for the sale of EP and/or RP with an Authority customer who has declined the Authority's offer to enter into a form of agreement for the sale of EP and/or RP that is associated with Service Tariff No. WNY-2; or
 - b. any agreement for the sale of EP and/or RP with an Authority customer which is associated with such customer's participation in an Alternative REC Compliance Program provided for in Schedule E of this Agreement.
3. Notwithstanding any provision of this Agreement to the contrary, the power and energy rates for Electric Service shall be subject to increase by Authority at any time upon 30 days prior written notice to Customer if, after consideration by Authority of its legal obligations, the marketability of the output or use of the Project and Authority's competitive position with respect to other suppliers, Authority determines in its discretion that increases in rates obtainable from any other Authority customers will not provide revenues, together with other available Authority funds not needed for operation and maintenance expenses, capital expenses, and reserves, sufficient to meet all requirements specified in Authority's bond and note resolutions and covenants with the holders of its financial obligations. Authority shall use its best efforts to inform Customer at the earliest practicable date of its intent to increase the power and energy rates pursuant to this provision. With respect to any such increase, Authority shall forward to Customer with the notice of increase, an explanation of all reasons for the increase, and shall also identify the sources from which Authority will obtain the total of increased revenues and the bases upon which Authority will allocate the increased revenue requirements among its customers. Any such increase in rates shall remain in effect only so long as Authority determines such increase is necessary to provide revenues for the purposes stated in the preceding sentences.
 4. In addition to all other fees, assessments and charges provided for in the Agreement, Service Tariff WNY-2 and the Rules, the Customer shall be responsible for payment of the Zero Emission Credit Charge and Monthly Renewable Energy Credit Charge provided for in Schedule D and Schedule E, respectively, of this Agreement.

ARTICLE IV

SUPPLEMENTAL COMMITMENTS

1. Supplemental Commitments. Schedule B sets forth the Customer's "Supplemental Expansion Power and/or Replacement Power Commitments" ("Supplemental Commitments"). The Authority's obligation to provide Electric Service under this Agreement is expressly conditioned upon the Customer's timely compliance with the Supplemental Commitments described in Schedule B as further provided in this Agreement. The Customer's Supplemental Commitments are in addition to all other commitments and obligations provided in this Agreement.
2. Supplemental Commitments and Compliance – Reporting Years 2017 and 2018. The Customer's supplemental commitments for Reporting Years 2017 and 2018 provided in the Prior Agreement shall survive the termination of the Prior Agreement and shall be enforceable by the Authority on the terms and conditions provided for in the Prior Agreement.

3. Special Provisions Relating to a New or Expanded Facility.

a. Proposed New or Expanded Facility; Failure to Complete.

If Schedule B provides for the construction of a new facility or an expansion of an existing facility (collectively, “Expansion Project”), and the Customer fails to complete the Expansion Project by the date specified in Schedule B, the Authority may, in its discretion, (a) cancel the Allocation, or (b) if it believes that the Expansion Project will be completed in a reasonable time, agree with the Customer to extend the time for completion of the Expansion Project.

b. Proposed New or Expanded Facility; Partial Performance.

If the Expansion Project results in a completed Facility that is only partially operational, or is materially different than the Expansion Project agreed to in Schedule B (as measured by such factors as size, capital investment expenditures, capital improvements, employment levels, estimated energy demand and/or other criteria determined by the Authority to be relevant), the Authority may, in its discretion, on its own initiative or at the Customer’s request, make a permanent reduction to the Allocation and Contract Demand to an amount that the Authority determines to fairly correspond to the completed Facility.

c. Notice of Completion; Commencement of Electric Service.

- (i) The Customer shall give the Authority not less than ninety (90) days' advance written notice of the anticipated date of completion of an Expansion Project. The Authority will inspect the Expansion Project for the purpose of verifying the status of the Expansion Project and notify Customer of the results of the inspection. The Authority will thereafter commence Electric Service within a reasonable time subject to the other provisions of this Agreement based on applicable operating procedures of the Authority, Customer’s local electric utility and NYISO.
- (ii) In the event of an Expansion Project being completed in multiple phases, at the Customer’s request the Authority may, in its discretion, allow commencement of part of the Allocation upon completion of any such phase, provided the Authority will similarly inspect the Expansion Project for the purpose of verifying the status of the completed phase of the Expansion Project. Upon such verification by the Authority of any such completed phase, the Authority, in its discretion, will determine an amount of kW that fairly corresponds to the completed phase of the Expansion Project, taking into account relevant criteria such as any capital expenditures, increased employment levels, and/or increased electrical demand associated with the completed phase of the Expansion Project.

d. Other Rights and Remedies Unaffected.

Nothing in this Article is intended to limit the Authority's rights and remedies provided for in the other provisions of this Agreement, including without limitation the provisions in Schedule B of this Agreement.

ARTICLE V
ENERGY-RELATED PROJECTS, PROGRAMS AND SERVICES

The Authority shall periodically communicate with the Customer for the purpose of informing the Customer about energy-related projects, programs and services ("Energy Services") offered by the Authority that in the Authority's view could provide value to the Customer and/or support the State's Clean Energy Standard. The Customer shall review and respond to all such offers in good faith, provided, however, that, except as otherwise provided for in this Agreement, participation in any such Energy Services shall be at the Customer's option, and subject to such terms and conditions agreed to by the Parties in one or more definitive agreements.

ARTICLE VI
SERVICE TARIFF; CONFLICTS

1. A copy of Service Tariff No. WNY-2 in effect upon the execution of this Agreement is attached to this Agreement as Exhibit 1, and will apply under this Agreement with the same force and effect as if fully set forth herein. The Customer consents to the application of Service Tariff WNY-2. Service Tariff No. WNY-2 is subject to revision by the Authority from time to time, and if revised, the revised provisions thereof will apply under this Agreement with the same force and effect as if set forth herein. The Authority shall provide the Customer with prior written notice of any revisions to Service Tariff No. WNY-2.
2. In the event of any inconsistencies, conflicts, or differences between the provisions of Service Tariff No. WNY-2 and the Rules, the provisions of Service Tariff No. WNY-2 shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and Service Tariff No. WNY-2 or the Rules, the provisions of this Agreement shall govern.

ARTICLE VII
TRANSMISSION AND DELIVERY

1. The Customer shall be responsible for:
 - a. complying with all requirements of its local electric utility (including any other interconnecting utilities) that are necessary to enable the Customer to receive delivery service for the Allocation. Delivery of the Allocation shall be subject to the Utility Tariff;
 - b. paying its local electric utility for delivery service associated with the Allocation in accordance with the Utility Tariff, and if the Authority incurs any charges associated with such delivery service, reimbursing the Authority for all such charges; and

- c. obtaining any consents and agreements from any other person that are necessary for the delivery of the Allocation to the Facility, and complying with the requirements of any such person, provided that any such consents, agreements and requirements shall be subject to the Authority's approval.
2. The Authority will use good faith efforts to provide the Customer with at least one year's advance notice of the scheduled expiration of Historic Fixed Price Transmission Congestion Contracts. After issuance of any such notice, the Authority will make itself available at reasonable times to collaborate with the Customer and other EP and RP customers to discuss potential risk-hedging options that might be available following expiration of such contracts.
3. The Customer understands and acknowledges that delivery of the Allocation will be made over transmission facilities under the control of the NYISO. The Authority will act as the LSE with respect to the NYISO, or arrange for another entity to do so on the Authority's behalf. The Customer agrees and understands that it shall be responsible to the Authority for all costs incurred by the Authority with respect to the Allocation for the services established in the NYISO Tariff, or other applicable tariff ("NYISO Charges"), as set forth in Service Tariff No. WNY-2 or any successor service tariff, regardless of whether such NYISO Charges are transmission-related.
4. The Authority will consider opportunities to assist the Customer concerning actions, practices, or procedures of the Customer's local electric utility identified by the Customer that could adversely impact the implementation and effectiveness of the EP and RP programs, provided that whether or not to take any action or adopt any position on any issue, including any adverse position, is within the Authority's discretion and further subject to applicable laws, regulations and existing legal obligations.

ARTICLE VIII

BILLING AND BILLING METHODOLOGY

1. The billing methodology for the Allocation shall be determined on a "load factor sharing" basis in a manner consistent with the Utility Tariff and any agreement between the Authority and the Customer's local electric utility. An alternative basis for billing may be used provided the Parties agree in writing and the local electric utility provides its consent if such consent is deemed necessary.
2. All other provisions with respect to billing are set forth in Service Tariff No. WNY-2 and the Rules.
3. The rights and remedies provided to the Authority in this Article are in addition to any and all other rights and remedies available to Authority at law or in equity.

ARTICLE IX

HYDROPOWER CURTAILMENTS AND SUBSTITUTE ENERGY

1. The Customer shall, on a form provided by the Authority, elect to either (a) purchase Substitute Energy from the Authority, or (b) rely on Customer-Arranged Energy, for the purpose of replacing Firm Energy that is not supplied to the Customer due to a Planned

Hydropower Curtailment. The Customer shall make its election in accordance with the time period and other requirements prescribed in such form. The election shall apply for the entire calendar year identified in the form.

2. The Customer may change its election on a form provided by the Authority by giving the Authority notice of such change no later than the first day of November preceding the calendar year to which the Customer intends such change to become effective. Such change shall be effective on the first day of January following the Authority's receipt the Customer's notice and shall remain in effect unless it is changed in accordance with the provisions of this Section IX.1.
3. In the event of an anticipated or planned Adverse Water Condition, the Authority will have the right in its discretion to implement Planned Hydropower Curtailments. The Authority will implement Planned Hydropower Curtailments on a non-discriminatory basis as to all Authority customers that are served by the Project. The Authority will provide the Customer with advance notice of Planned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer no later than the tenth business day of the month prior to the month in which the Planned Hydropower Curtailment is expected to occur unless the Authority is unable to provide such notice due to the circumstances that impede such notice, in which case the Authority will provide such advance notice that is practicable under the circumstances.
4. If the Customer elected to purchase Substitute Energy from the Authority, the Authority shall provide Substitute Energy to the Customer during all Planned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, Substitute Energy shall be sourced from markets administered by the NYISO. The Authority may require the Customer to enter into one or more separate agreements to facilitate the provision of Substitute Energy to the Customer.
5. If the Customer elected to rely on Customer-Arranged Energy, the Authority shall have no responsibility to provide the Customer with Substitute Energy during any Planned Hydropower Curtailment, and the Customer shall be responsible for the procurement, scheduling, delivery and payment of all costs associated with Customer-Arranged Energy.
6. The Customer shall have the right to reduce its load in response to a Planned Hydropower Curtailment (a "Load Reduction"), provided, however, that the Customer shall, on an Authority form, provide the Authority with no less than seven (7) days' advance notice of the time period(s) during when the Load Reduction will occur, the estimated amount of the Load Reduction (demand and energy), and all other information required by such form. The Authority will confirm whether the notice provides the required information and proposed Load Reduction has been accepted. The Customer shall reimburse the Authority for all costs that the Authority incurs as a result of the Customer's failure to provide such notice.
7. In the event of an Adverse Water Condition that the Authority did not anticipate or forecast, the Authority shall have the right in its discretion to implement Unplanned Hydropower Curtailments. The Unplanned Hydropower Curtailments will be implemented on a non-discriminatory basis as to all Authority customers that are served by the Project.

8. The Authority will provide the Customer with notice of Unplanned Hydropower Curtailments that in the Authority's judgment will impact Electric Service to the Customer within five (5) business days after the first occurrence of an Unplanned Hydropower Curtailment that occurs within a month, and thereafter will provide the Customer with reasonable notice under the circumstances of the potential for any other Unplanned Hydropower Curtailments that are expected to occur within such month or beyond. The Authority will give the Customer notice of any Unplanned Hydropower Curtailments that the Authority believes are likely to exceed forty-eight (48) continuous hours in duration.
9. Notwithstanding the Customer's election pursuant to Section IX.1, the Authority shall provide the Customer with Substitute Energy during Unplanned Hydropower Curtailments.
10. For each kilowatt-hour of Substitute Energy provided by the Authority during a Planned Hydropower Curtailment, the Customer shall pay the Authority directly during the billing month: (1) the difference between the market cost of the Substitute Energy and the charge for firm energy as provided for in this Agreement; and (2) any NYISO charges and taxes the Authority incurs in connection with the provision of such Substitute Energy. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Planned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
11. The Customer shall be responsible for all costs associated with the Authority's provision of Substitute Energy during Unplanned Hydropower Curtailments. Unless otherwise agreed upon by the Parties in writing, billing and payment for Substitute Energy provided for Unplanned Hydropower Curtailments shall be governed by the provisions of Service Tariff WNY-2 relating to the rendition and payment of bills for Electric Service.
12. The Authority shall be under no obligation to deliver and will not deliver any such curtailed energy to the Customer in later billing periods.

ARTICLE X

EFFECTIVENESS, TERM AND TERMINATION

1. This Agreement shall become effective and legally binding on the Parties on the Effective Date.
2. Once commenced, Electric Service under the Agreement shall continue until the earliest of:
(a) termination by the Customer with respect to its Allocation upon ninety (90) days prior written notice to the Authority; (b) termination by the Authority pursuant to this Agreement, Service Tariff No. WNY-2, or the Rules; or (c) expiration of the Allocation by its own term as specified in Schedule A.
3. The Customer may exercise a partial termination of the Allocation upon at least sixty (60) days' prior written notice to the Authority. The Authority will effectuate the partial termination as soon as practicable after receipt of such notice taking account of the Authority's internal procedures and requirements of the Customer's local electric utility.

4. The Authority may cancel service under this Agreement or modify the quantities of Firm Power and Firm Energy associated with the Allocation: (1) if such cancellation or modification is required to comply with any final ruling, order or decision of any regulatory or judicial body of competent jurisdiction (including any licensing or re-licensing order or orders of the FERC or its successor agency); or (2) as otherwise provided in this Agreement, Service Tariff No. WNY-2, or the Rules.

ARTICLE XI

EXTENSIONS OF ALLOCATION; AWARD OF ADDITIONAL ALLOCATIONS

1. The Customer may apply to the Authority for an extension of the term of the Allocation identified in Schedule A:
 - a. during the thirty-six (36) month period immediately preceding the scheduled expiration of the Allocation;
 - b. pursuant to any other process that the Authority establishes; or
 - c. with the Authority's written consent.
2. Upon proper application by the Customer, the Authority may in accordance with applicable law and Authority procedures award additional allocations of EP and/or RP to the Customer at such rates and on such terms and conditions as the Authority establishes. If the Customer agrees to purchase Electric Service associated with any such additional allocation, the Authority will (a) incorporate any such additional allocations into Schedule A, or in its discretion will produce a supplemental schedule, to reflect any such additional allocations, and (b) produce a modified Appendix to Schedule B, as the Authority determines to be appropriate. The Authority will furnish the Customer with any such modified Schedule A, supplemental schedule, and/or a modified Appendix to Schedule B, within a reasonable time after commencement of Electric Service for any such additional allocation.
3. In addition to any requirements imposed by law, the Customer hereby agrees to furnish such documentation and other information as the Authority requests to enable the Authority to evaluate any requests for extension of the Allocation or additional allocations and consider the terms and conditions that should be applicable of any extension or additional allocations.

ARTICLE XII

NOTICES

1. Notices, consents, authorizations, approvals, instructions, waivers or other communications provided in this Agreement shall be in writing and transmitted to the Parties as follows:

To: The Authority

New York Power Authority
123 Main Street
White Plains, New York 10601
Email: MED-BPAC@nypa.gov
Facsimile: (914) 390-8156
Attention: Manager – Business Power Allocations and Compliance

To: The Customer

Niagara Falls Water Board

Address: _____

Email: _____

Facsimile: _____

Attention: _____ (Name/ Title)

2. The foregoing notice/notification information pertaining to either Party may be changed by such Party upon notification to the other Party pursuant to Section XII.1.
3. Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: (a) if sent by U.S. First Class mail addressed to the Party at the address set forth above; (b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above; (c) if delivered by hand, with written confirmation of receipt; (d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt; or (e) on the date of transmission if sent by electronic communication to the appropriate address as set forth above, with confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

ARTICLE XIII

SUCCESSORS AND ASSIGNS; RESALE OF HYDROPOWER

1. This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the legal successors and assigns of either Party hereto, provided that no assignment by either Party or any successor or assignee of such Party of its rights and obligations hereunder shall be made or become effective without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Notwithstanding the foregoing sentence, the Authority may require such approvals, and such consents and other agreements from the Customer and other parties, that the Authority determines are necessary in order to effectuate any such assignment.
2. The Customer may not transfer any portion of the Allocation to any other person, or a location different than the Facility, unless: (a) the Authority in its discretion authorizes the transfer Authority; (b) all other requirements applicable to a transfer, including board approvals, are satisfied; and (c) the transfer is effectuated in a form and subject to such terms and conditions approved by the Authority. Any purported transfer that does not comply with the foregoing requirements shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service or terminate the Allocation and/or this Agreement.

3. The Customer may not sell any portion of the Allocation to any other person. Any purported sale shall be invalid and constitute grounds for the Authority in its discretion to suspend Electric Service, or terminate the Allocation and/or this Agreement.

ARTICLE XIV **MISCELLANEOUS**

1. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the Niagara Redevelopment Act (16 USC §§836, 836a) and rulings by the IJC and without regard to conflicts of law provisions.

2. Venue

The Parties: (a) consent to the exclusive jurisdiction and venue of any state court within or for Albany County, New York, with subject matter jurisdiction for adjudication of any claim, suit, action or any other proceeding in law or equity arising under, or in any way relating to this Agreement; (b) agree to accept service of process; and (c) will not raise any argument of inconvenient forum.

3. Previous Agreements; Modifications; and Interpretation

- a. Subject to paragraph b of this Section, this Agreement shall constitute the sole and complete agreement of the Parties hereto with respect to the sale of the Allocation and the subject matter of the Agreement, and supersedes all previous communications and agreements between the Parties, oral or written, with reference to the sale of the Allocation.
- b. The Prior Agreement is superseded and terminated effective as of the Effective Date of this Agreement, provided, however, that: (i) the Customer shall remain liable to the Authority for all duties, liabilities, charges and obligations due in accordance with the Prior Agreement that have accrued prior to the Effective Date; and (ii) the Parties' rights and obligations concerning the Customer's supplemental commitments under the Prior Agreement for reporting years 2017 and 2018 shall remain in full force and effect and shall be enforceable by the Authority on the basis of the terms and conditions provided for in the Prior Agreement.
- c. No modifications of this Agreement shall be binding upon the Parties hereto or either of them unless such modification is in writing and is signed by a duly authorized officer of each of them.
- d. No provision shall be construed against a Party on the basis that such Party drafted such provision.

4. Waiver

Any waiver at any time by either the Authority or the Customer of their rights with respect to a default or of any other matter arising out of this Agreement shall not be deemed to be a waiver with respect to any other default or matter. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party making the waiver.

5. Severability and Voidability

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC or a court of competent jurisdiction, such order shall not be deemed to invalidate the remaining terms or provisions hereof. Notwithstanding the preceding sentence, if any provision of this Agreement is rendered void or unenforceable or otherwise modified by a court or agency of competent jurisdiction, the entire Agreement shall, at the option of either Party and only in such circumstances in which such Party's interests are materially and adversely impacted by any such action, be rendered void and unenforceable by such affected Party.

ARTICLE XV
EXECUTION

To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the Parties hereto. The delivery of an executed counterpart of this Agreement as a PDF or similar file type transmitted via electronic mail, cloud based server, e-signature technology or similar electronic means shall be legal and binding and shall have the same full force and effect as if an original executed counterpart of this Agreement had been delivered.

[SIGNATURES FOLLOW ON NEXT PAGE]

AGREED:

Niagara Falls Water Board

By: _____

Title: _____

Date: _____

AGREED:

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____
John R. Koelmel, Chairman

Date: _____

SCHEDULE A
EXPANSION POWER AND/OR REPLACEMENT POWER ALLOCATIONS

Customer: Niagara Falls Water Board

No.	Type of Allocation	Allocation Amount (kW)	Facility and Address	Trustee Approval Date	Allocation Expiration Date
1	Replacement Power	1,425	5815 Buffalo Avenue Niagara Falls, NY 14304 1200 Buffalo Avenue Niagara Falls, NY 14304 920 Whirlpool St. Niagara Falls, NY 14305	October 2, 2018	December 31, 2028
2	Replacement Power	619	5815 Buffalo Avenue Niagara Falls, NY 14304 1200 Buffalo Avenue Niagara Falls, NY 14304 920 Whirlpool St. Niagara Falls, NY 14305	October 2, 2018	December 31, 2028
3	Replacement Power	1,600	5815 Buffalo Avenue Niagara Falls, NY 14304 1200 Buffalo Avenue Niagara Falls, NY 14304 920 Whirlpool St. Niagara Falls, NY 14305	October 2, 2018	December 31, 2028
	TOTAL	3,644 kW			

SCHEDULE B
**SUPPLEMENTAL EXPANSION POWER AND/OR REPLACEMENT POWER
COMMITMENTS**

ARTICLE I
SPECIFIC SUPPLEMENTAL COMMITMENTS

1. Employment Commitments

- a. The Customer shall create and maintain the employment level set forth in the Appendix to this Schedule B (the “Base Employment Level”). Such Base Employment Level shall be the total number of full-time positions held by: (a) individuals who are employed by the Customer at Customer’s Facility identified in the Appendix to this Schedule, and (b) individuals who are contractors or who are employed by contractors of the Customer and assigned to the Facility identified in such Appendix (collectively, “Base Level Employees”). The number of Base Level Employees shall not include individuals employed on a part-time basis (less than 35 hours per week); provided, however, that two individuals each working 20 hours per week or more at such Facility shall be counted as one Base Level Employee.
- b. The Base Employment Level shall not be created or maintained by transfers of employees from previously held positions with the Customer or its affiliates within the State of New York, except that the Base Employment Level may be filled by employees of the Customer laid off from other Customer facilities for *bona fide* economic or management reasons.
- c. The Authority may consider a request to change the Base Employment Level based on a claim of increased productivity, increased efficiency or adoption of new technologies or for other appropriate reasons as determined by the Authority. Any such change shall be within Authority’s discretion.

2. Capital Investment Commitments

The Customer shall make the capital investments specified in the Appendix to this Schedule B.

3. Power Utilization

For each month the Authority provides Electric Service to the Customer, the Customer shall utilize the entire Allocation, as represented by the Billing Demand (as such term is described in Service Tariff No. WNY-2), provided, however, that if only part of the Allocation is being utilized in accordance with Schedule C, the Customer shall utilize such partial amount of the Allocation.

4. Energy Efficiency and Conservation Program

- a. The Customer shall implement an energy efficiency and conservation program at the Facility through either (a) enrollment of the Facility and participation in NYEM in accordance with a NYEM Agreement, or (b) one or more Physical Energy Audits of the Facility, or (c) a combination of such measures, in accordance with the provisions of this Article.
- b. The Authority shall transmit to the Customer a NYEM Agreement and an election form. The Customer shall elect to either (a) enroll the Facility and participate in NYEM for a three-year term ("NYEM Participation") in accordance with the NYEM Agreement, or (b) perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority's communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit within three (3) years of the Effective Date of this Agreement, at its own expense.
- c. The Authority shall, on or before the expiration of the three-year term of the NYEM Agreement, transmit to the Customer a NYEM Agreement specifying the terms and conditions that would apply to NYEM participation for a second term, and an election form. The Customer shall elect either (a) NYEM Participation for a second term, or (b) to perform a Physical Energy Audit of the Facility. The Customer shall make the election within sixty (60) days of its receipt of the Authority's communication. If the Customer elects NYEM Participation, it shall execute and return the NYEM Agreement to the Authority with the election form, abide by the NYEM Agreement, and participate in NYEM at its own expense at the rate provided in the NYEM Agreement. If the Customer elects to perform a Physical Energy Audit, it shall perform the Physical Energy Audit during the calendar year that begins six years after of the Effective Date of this Agreement, at its own expense.
- d. The Authority may in its discretion waive the requirement for a Physical Energy Audit, or may agree to a limited energy audit of the Facility, where it determines that the Physical Energy Audit is unnecessary based on the age of the Facility, energy efficiency and conservation improvements made at the Facility, the length of the Allocation, or other considerations the Authority determines to be relevant.

ARTICLE II
RECORDKEEPING, REPORTING AND FACILITY ACCESS

1. Employment

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority, of the total number of Base Level Employees who are employed at or assigned to the Customer's Facility identified in the Appendix to this Schedule, as reported to the United States Department of Labor (or as reported in such other record as agreed upon by the Authority and the Customer). Such report shall separately identify the individuals who are employed by the Customer, and the individuals who are contractors or who are employed by contractors of the Customer, and shall be certified to be correct by an officer of the Customer, plant manager or such other person authorized by the Customer to prepare and file such report and shall be provided to the Authority on or before the last day of February following the end of the most recent calendar year. The Authority shall have the right to examine and audit on reasonable advance written notice all non-confidential written and electronic records and data concerning employment levels including, but not limited to, personnel records and summaries held by the Customer and its affiliates relating to employment in New York State.

2. Capital Investments

The Customer shall comply with the recordkeeping, recording and reporting requirements specified in the Appendix to this Schedule B.

3. Power Usage

A record shall be kept monthly by the Customer, and provided on a calendar year basis to the Authority on or before the last day of February following the end of the most recent calendar year, of the maximum demand utilized each month in the Facility receiving the power covered by the Agreement.

4. Energy Efficiency and Conservation Program

Upon the Authority's request, the Customer shall provide the Authority with (a) a copy of the results of any Physical Energy Audit performed at the Facility (or, at the Authority's option, a report describing the results), performed pursuant to this Article; and (b) a description of any energy efficiency or conservation measures that the Customer has implemented at the Facility in response to any Physical Energy Audit or as a result of NYEM Participation.

5. Facility Access

Notwithstanding any other provision of the Agreement, the Customer shall provide the Authority with such access to the Facility, and such documentation, as

the Authority deems necessary to determine the Customer's compliance with the Customer's Supplemental Commitments specified in this Schedule B.

ARTICLE III

COMPLIANCE ACTION BY THE AUTHORITY

1. Employment

If the year-end monthly average number of employees is less than 90% of the Base Employment Level set forth in the Appendix to this Schedule B for the subject calendar year, the Authority may reduce the Contract Demand in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount of reduction will be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average monthly employment during the subject calendar year divided by the Base Employment Level. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, the Agreement shall automatically terminate.

2. Capital Investment Commitment

The Authority may reduce the Contract Demand as provided in the Appendix to this Schedule B if the Customer does not comply with the Capital Investment Commitment.

3. Power Utilization Level

If the average of the Customer's six (6) highest Billing Demands (as such term is described in Service Tariff No. WNY-2) for Expansion Power and/or Replacement Power is less than 90% of the Customer's Contract Demand in such calendar year the Authority may reduce the Contract Demand subject to in accordance with the procedures provide in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the average of the six (6) highest Billing Demands for in such calendar year divided by the Contract Demand. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.

4. Additional Compliance Action

In addition to the Authority's other rights and remedies provided in this Agreement, Service Tariff WNY-2 and the Rules, the Authority may suspend Electric Service to the Customer if the Customer does not comply with any of the requirements in Section I.4 or Article II of this Schedule B.

5. Notice of Intent to Reduce Contract Demand

In the event that the Authority determines that the Contract Demand will be wholly or partially reduced pursuant to Sections III.1, III.2, or III.3 of this Schedule B, the Authority shall provide the Customer with at least thirty (30) days prior written notice of the proposed reduction, specifying the amount and reason for the reduction.

Before implementing any reduction, the Authority may consider the Customer's scheduled or unscheduled maintenance, Facility upgrade periods, and the business cycle. If, at the end of the thirty (30) day notice period, the Authority determines that a reduction is warranted, it shall provide the Customer with notice of such determination and provide the Customer with sixty (60) days to present a proposed plan with actionable milestones to cure the deficiency. The Authority shall respond to the Customer concerning the acceptability of any proposed plan that is provided in accordance with this Section III.5 within thirty (30) days of the Authority's receipt of such proposed plan. It shall be within the Authority's discretion whether or not to accept the Customer's proposed plan, require a different plan, or implement the reduction of the Contract Demand.

APPENDIX TO SCHEDULE B

BASE EMPLOYMENT LEVEL

The Customer shall employ at least N/A full-time employees (“Base Employment Level”) at the Customer’s Facility. The Base Employment Level shall be maintained for the term of the Allocation in accordance with Article I of Schedule B.

CAPITAL INVESTMENT COMMITMENTS

1. **Annual Capital Investment Commitment** (if applicable, as specified below)
 - a. Each Reporting Year, the rolling average of the annual capital investments made by the Customer at the Facility (“Rolling Average”) shall total not less than \$3,766,667 (the “Annual Capital Investment Commitment”). For purposes of this provision, “Rolling Average” means the three-year average comprised of (1) the total amount of capital investments (“Annual CI Expenditures”) made by the Customer at the Facility during the current Reporting Year, and (2) the Annual CI Expenditures made by the Customer at the Facility during the two prior Reporting Years.
 - b. Each year, the Customer shall record its Annual CI Expenditures for purposes of enabling the Authority to determine and verify the Rolling Average, which shall be provided to the Authority in a form specified by the Authority on or before the last day of February following the end of the most recent calendar year.
 - c. If the Customer’s Rolling Average as determined by the Authority is less than 90% of its Annual Capital Investment Commitment for the Reporting Year, the Contract Demand may be reduced by the Authority in accordance with the procedures provided in Section III.5 of this Schedule. The maximum amount by which the Authority may reduce the Contract Demand shall be determined by multiplying the Contract Demand by the quantity one minus the quotient of the Rolling Average divided by the Annual Capital Investment Commitment. Any such reduction shall be rounded to the nearest ten (10) kW. In the event of a reduction of the Contract Demand to zero, this Agreement shall automatically terminate.
2. **Expansion Project–Capital Investment Commitment** (if applicable, as specified below)
 - a. The Customer shall make a minimum capital investment of \$ N/A to construct, furnish and/or expand the Facility (“Expansion Project Capital Investment Commitment”). The Expansion Project Capital Investment Commitment is expected to consist of the following approximate expenditures on the items indicated:

Line Item 1 -	\$ <u>N/A</u>
Line Item 2 -	\$ <u>N/A</u>
Line Item 3 -	\$ <u>N/A</u>

Total Expansion Project Capital Investment Commitment:

- b. The Expansion Project Capital Investment Commitment shall be made, and the Facility shall be completed and fully operational, no later than N/A (*i.e.*, within three (3) years of the date of the Authority's award of the Allocation). Upon request of the Customer, such date may be extended in the discretion of the Authority.

SCHEDULE C

TAKEDOWN SCHEDULE

SCHEDULE D
ZERO EMISSION CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Affected LSEs” has the meaning provided in Section II.2 of this Schedule D.

“CES Order” means the Order issued by the PSC entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“EP and RP Programs ZEC Costs” has the meaning provided in Section II.4.b of this Schedule D.

“Government Action” has the meaning provided in Section II.8 of this Schedule D.

“Load Serving Entity” or “LSE” has the meaning provided in the CES Order.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“Zero Emission Credit” or “ZEC” has the meaning provided in the CES Order.

“Zero Emission Credit Charge” or “ZEC Charge” means the charge to the Customer established in this Schedule D.

“ZEC Purchase Obligation” has the meaning provided in Section II.2 of this Schedule D.

“ZEC Program Year” has the meaning provided in Section II.2 of this Schedule D.

II. ZEC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a ZEC Charge as provided in this Schedule D. The ZEC Charge shall be in addition to all other charges, fees and assessments provided for in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the ZEC Charge.
2. As provided in the CES Order, the Public Service Commission, as part of the CES and Tier 3 of the Renewable Energy Standard, imposed an obligation on Load Serving Entities that are subject to the CES Order (“Affected LSEs”) to purchase Zero Emission Credits from NYSERDA in an amount representing the Affected LSE’s proportional share of ZECs calculated on the basis of the amount of electric load the LSE serves in relation to the total electric load served by all Load Serving Entities in the New York Control area, to support the preservation of existing at risk nuclear zero emissions attributes in the State (the “ZEC Purchase Obligation”). The ZEC Purchase Obligation is implemented on the basis of program years running from April 1 through March 31 of each year (“ZEC Program Year”).
3. The ZEC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of supporting the CES and Tier 3 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan. The Authority will comply with the CES and Tier 3 of the RES by applying a form of ZEC Purchase Obligation to the end-user load for which the Authority serves as a load serving entity, including the load that the Authority serves under the EP and RP power programs.
4. The ZEC Charge, which is intended to recover from the Customer costs that the Authority incurs for purchasing ZECs in quantities that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:
 - a. The cost of the total ZEC Purchase Obligation for all LSEs in the New York Control Area, including the Authority as a participating load serving entity, will be assessed pursuant to the methodology provided in the CES Order. The Authority will purchase its proportionate share of ZECs from NYSERDA based on the proportion of the forecasted total kilowatt-hours load served by

the Authority (i.e., total Authority LSE load) in relation to the forecasted total kilowatt-hours load served by all LSEs in the New York Control Area as provided in the CES Order. The ZEC Purchase Obligations may be based on initial load forecasts with reconciliations made at the end of each ZEC Program Year by NYSERDA.

- b. The Authority will allocate costs from its ZEC Purchase Obligation between its power programs/load for which it serves as load serving entity, including the EP and RP load that it serves (the “EP and RP Programs ZEC Costs”). Such allocation will be based on the forecasted kilowatt-hours load of the EP and RP programs to be served by the Authority in relation to the forecasted total kilowatt-hours load served by the Authority (total Authority LSE load) for each ZEC Program Year. In addition, any balance resulting from the ZEC Program Year-end reconciliation of ZEC Purchase Obligations will be allocated to the EP and RP power programs based on the proportion of the actual annual kilowatt-hours load served under such programs to total actual annual kilowatt-hours load served by the Authority (total Authority LSE load).
 - c. The Authority will allocate a portion of the EP and RP Programs ZEC Costs to the Customer as the ZEC Charge based on the proportion of the Customer’s actual kilowatt-hours load for the EP and/or RP purchased by the Customer to total kilowatt-hours load served by the Authority under the EP and RP power programs (i.e., EP and RP Programs level load). In addition, any balance resulting from the ZEC Program Year-end reconciliation of the ZEC Purchase Obligation referenced above will be passed through to the Customer based on the proportion of the Customer’s annual kilowatt-hours load purchased under this Agreement to total annual kilowatt-hours load served under the EP and RP power program by the Authority (EP and RP Programs level load). The ZEC Charge assessed to the Customer shall not include any costs resulting from the Authority’s inability to collect a ZEC Charge from any other Authority customer.
5. The Authority may, in its discretion, include the ZEC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the ZEC Charge pursuant to another Authority-established procedure.
6. The Authority may, in its discretion, modify the methodology used for determining the ZEC Charge and the procedures used to implement such ZEC Charge on a nondiscriminatory basis among affected EP and RP customers, upon consideration of such matters as Public Service Commission orders modifying or implementing the CES Order, guidance issued by the New York Department of Public Service, and other information that the Authority reasonably determines to be appropriate to the determination of such methodology. The Authority shall

provide Customer with reasonable notice of any modifications to the methodology or procedures used to determine and implement the ZEC Charge.

7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.
8. If the ZEC Purchase Obligation is modified or terminated by the Public Service Commission or other controlling governmental authority (collectively, "Government Action"), the Authority shall modify or terminate the ZEC Charge, and assess any additional charges or provide any credits to the Customer, to the extent that the Authority determines such actions to be appropriate based on such Government Action.

SCHEDULE E
MONTHLY RENEWABLE ENERGY CREDIT CHARGE

I. DEFINITIONS

When used with initial capitalization, whether singular or plural, the following terms, as used in this Schedule, shall have the meanings as set forth below. Capitalized terms not defined in this Schedule shall have the meaning ascribed to them elsewhere in the Agreement, in Service Tariff No. WNY-2, or in the Rules.

“Alternative REC Compliance Program” has the meaning provided in Section III.1 of this Schedule E.

“Annual REC Percentage Target” has the meaning provided in Section II.2 of this Schedule E.

“CES Order” means the Order issued by the Public Service Commission entitled “Order Adopting a Clean Energy Standard, issued on August 1, 2016, in Case Nos. 15-E-0302 and 16-E-0270, and includes all subsequent orders amending, clarifying and/or implementing such Order or the RES.

“Clean Energy Standard” or “CES” means the Clean Energy Standard adopted by the State in the CES Order.

“Load Serving Entity” has the meaning provided in the CES Order.

“Mandatory Minimum Percentage Proportion” has the meaning provided in the CES Order.

“Monthly Renewable Energy Credit Charge” or “Monthly REC Charge” means the monthly charge to the Customer established in this Schedule E.

“NYSERDA” means the New York State Energy Research and Development Authority.

“Public Service Commission” means the New York State Public Service Commission.

“Renewable Energy Credit” or “REC” refers to a qualifying renewable energy credit as described in the CES Order.

“State Energy Plan” means the 2015 New York State Energy Plan as amended from time to time.

“RES Compliance Program” means a program or initiative that the Authority has adopted for the purpose of meeting the RES for the load that the Authority serves under the EP and RP power programs as authorized in the Power Authority Act.

“Renewable Energy Standard” or “RES” means the Renewable Energy Standard adopted by the State in the CES Order.

“REC Compliance Measures” mean: (1) the Authority’s procurement of RECs from NYSERDA in accordance with NYSERDA procedures and/or the CES Order; (2) the Authority’s procurement of RECs from available REC markets; (3) the Authority’s procurement of RECs from sources other than those identified in items (1) and (2) of this definition, including through a procurement process adopted by the Authority; and/or (4) any other measure that the PCS authorizes a Load Serving Entity to implement for the purpose of meeting the applicable Mandatory Minimum Percentage Proportion.

“Total Monthly EP-RP Load” has the meaning provided in Section II.3.b of this Schedule E

“Total Monthly REC Costs” has the meaning provided in Section II.3.b of this Schedule E.

II. MONTHLY REC CHARGE

1. Notwithstanding any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules, as of January 1, 2019, the Customer shall be subject to a Monthly REC Charge as provided in this Schedule E. The Monthly REC Charge is in addition to all other charges, fees and assessments provided in the Agreement, Service Tariff No. WNY-2 and the Rules. By accepting Electric Service under the Agreement, the Customer agrees to pay the Monthly REC Charge.
2. The Monthly REC Charge is part of a RES Compliance Program that the Authority has adopted for the purpose of complying with the CES and Tier 1 of the RES and implementing the EP and RP power programs in a manner that is consistent with the New York State Energy Plan, pursuant to which the Authority will invest in new renewable generation resources to serve its EP and RP customers. Such investments will be made through the procurement of RECs through REC Compliance Measures in quantities that are intended to address the annual Mandatory Minimum Percentage Proportions as applied by the Authority to the total EP and RP load that the Authority will serve each calendar year (the “Annual REC Percentage Target”) for the purpose of ultimately meeting the RES.
3. The Monthly REC Charge, which is intended to recover from the Customer costs that the Authority incurs for implementing REC Compliance Measures that are attributable to the Customer’s EP and/or RP load served under this Agreement, will be determined and assessed to the Customer as follows:

- a. The Authority shall have the right, for each calendar year to implement such REC Compliance Measures as it determines in its discretion to be appropriate for the purpose of meeting the Annual REC Percentage Target for the total EP and RP load that it will serve during such calendar year.
 - b. The Authority will, for each month of each calendar year, calculate the total costs (“Total Monthly REC Costs”) that the Authority has incurred or estimates that it will incur from implementing RES Compliance Measures for the purpose of meeting the Annual REC Percentage Target for the total EP and RP kilowatt-hour load for the month (“Total Monthly EP-RP Load”). The Total Monthly REC Costs may be calculated based on forecasts of the Total Monthly EP-RP Load that the Authority expects to serve for the month, or on a lagged basis based on the actual Total Monthly EP-RP Load that the Authority served for the month.
 - c. Each month, the Authority will assess to the Customer, as a Monthly REC Charge, which will represent the Customer’s share of the Total Monthly REC Costs assessed to the Total Monthly EP-RP Load. The Monthly REC Charge will be assessed as the proportion of the Customer’s total kilowatt-hours load served by the Authority for such month to the Total Monthly EP-RP Load served by the Authority for such month, provided, however, that:
 - i. the Monthly REC Charge to the Customer shall not include any costs associated with the Authority’s inability to collect the Monthly REC Charge from other Authority customers; and
 - ii. the effective per-MWh rate of the Monthly REC Charge to the Customer averaged over the REC Program Year to which the Annual REC Percentage Target applies shall not exceed the per-MWh rate of a Monthly REC Charge based on NYSERDA’s published REC price for the REC Program Year.
4. The Authority may, in its discretion, include the Monthly REC Charge as part of the monthly bills for Electric Service as provided for in the Agreement, or bill the Customer for the Monthly REC Charge pursuant to another Authority-established procedure.
5. The Authority will, at the conclusion of each calendar year in which it assesses a Monthly REC Charge, conduct a reconciliation process based on the actual costs that it incurred for REC Compliance Measures and actual load served for the year, compared with cost or load estimates or forecasts, if any, that the Authority used to calculate the Customer’s Monthly REC Charges during the year. The Authority will issue a credit, or an adjusted final charge for the year, as appropriate, based on the results of such reconciliation process. Any such final charge shall be payable within the time frame applicable to the Authority’s bills

for Electric Service under this Agreement or pursuant to any other procedure established by the Authority pursuant to Section II.4 of this Schedule E.

6. Notwithstanding the provisions of Section II.3 of this Schedule E, if Electric Service for the Allocation is commenced after the Authority has implemented REC Compliance Measures for the year in which such Electric Service is commenced, and as a result the Customer's load cannot be accounted for in such REC Compliance Measures, the Authority may in its discretion implement separate REC Compliance Measures in order to meet the Annual REC Percentage Target for Customer's load for the year, and bill the Customer for the costs associated with such separate REC Compliance Measures.
7. Nothing in this Schedule shall limit or otherwise affect the Authority's right to charge or collect from the Customer, any rate, charge, fee, assessment, or tax provided for under any other provision of the Agreement, or any provision of Service Tariff No. WNY-2 or the Rules.

III. ALTERNATIVE REC COMPLIANCE PROGRAM

1. Nothing in this Schedule E shall be construed as preventing the Parties from entering into other agreements for an alternative arrangement for the Authority to meet the Annual REC Percentage Target with respect to the Customer's Allocation, including but not limited to Customer self-supply of RECs, alternative REC compliance programs and cost allocation mechanisms, in lieu of the Monthly REC Charge provided in this Schedule E (collectively, "Alternative REC Compliance Program").
2. The Authority shall communicate at least biennially with the Customer concerning implementation of the RES Compliance Program and potential Alternative REC Compliance Programs, if any, that the Authority is offering or expects to offer.



POWER AUTHORITY OF THE STATE OF NEW YORK

30 SOUTH PEARL STREET

ALBANY, NY 12207

Schedule of Rates for Sale of Firm Power Service to
Expansion Power and Replacement Power Customers
Located in Western New York

Service Tariff No. WNY-2

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Schedule of Rates for Firm Power Service

I. Applicability

To sales of Expansion Power and/or Replacement Power directly to a qualified business Customer for firm power service.

II. Abbreviations and Terms

- kW kilowatt(s)
- kW-mo. kilowatt-month
- kWh kilowatt-hour(s)
- MWh megawatt-hour(s)
- NYISO New York Independent System Operator, Inc. or any successor organization
- PAL New York Public Authorities Law
- OATT Open Access Transmission Tariff issued by the NYISO

Agreement: An executed written agreement between the Authority and the Customer for the sale of Expansion Power and/or Replacement Power to the Customer.

Annual Adjustment Factor or **AAF**: This term shall have the meaning set forth in Section V herein.

Authority: The Power Authority of the State of New York, a corporate municipal instrumentality and a political subdivision of the State of New York created pursuant to Chapter 772 of the New York Laws of 1931 and existing and operating under Title 1 of Article 5 of the PAL, also known as the “New York Power Authority.”

Customer: A business entity that has received an allocation of Expansion Power and/or Replacement Power, and that purchases Expansion Power and/or Replacement Power, directly from the Authority.

Electric Service: The power and energy provided to the Customer in accordance with the Agreement, this Service Tariff and the Rules.

Expansion Power or **EP** and/or **Replacement Power** or **RP**: Firm Power and Firm Energy made available under this Service Tariff by the Authority from the Project for sale to the Customer for business purposes pursuant to PAL § 1005(5) and (13).

Firm Power: Capacity (kW) that is intended to be always available from the Project subject to the curtailment provisions set forth in the Agreement between the Authority and the Customer and this Service Tariff. Firm Power shall not include peaking power.

Firm Energy: Energy (kWh) associated with Firm Power.

Load Serving Entity or **LSE**: This term shall have the meaning set forth in the Agreement.

Load Split Methodology or **LSM**: A type of billing methodology applicable to a Customer's Allocation which determines how a Customer's total metered usage is apportioned between the power and energy supplied by the Allocation and the Customer's other source of electricity supply, if any. LSM is usually provided for in an agreement between the Authority and the Customer's local electric utility, an agreement between the Authority and the Customer, or an agreement between the Authority, the Customer and the Customer's local electric utility. The load split methodology is often designated as "Load Factor Sharing" or "LFS", "First through the Meter" or "FTM", "First through the Meter Modified" or "FTM Modified", or "Replacement Power 2" or "RP 2".

Project: The Authority's Niagara Power Project, FERC Project No. 2216.

Rate Year or **RY**: The period from July 1 through June 30. For example, RY 2018 refers to July 1, 2018 through June 30, 2019.

Rules: The Authority's rules and regulations set forth in 21 NYCRR § 450 *et seq.*, as they may be amended from time to time.

Service Tariff: This Service Tariff No. WNY-2.

All other capitalized terms and abbreviations used in this Service Tariff but not defined in this Section or other provisions of this Service Tariff shall have the same meaning as set forth in the Agreement.

III. Monthly Rates and Charges

A. Expansion Power (EP) and Replacement Power (RP) Base Rates

The rates to be charged to the Customer by the Authority shall be as follows:

Billing Period	Demand (\$/kW)	Energy (\$/MWh)
January – June 2019	7.60	13.00

1. For RY 2019 (July 2019 through June 2020 Billing Periods), 50% of the Annual Adjustment Factor ("AAF"), as described in Section V, will be applied to the demand and energy rates stated in the table above.
2. For RY 2020 (July 2020 through June 2021 Billing Periods) and each Rate Year thereafter, the AAF will be applied to the then-effective base rates for demand and energy in accordance with Section V.

B. EP and RP Rates no Lower than Rural/Domestic Rate

At all times the applicable base rates for demand and energy determined in accordance with Sections III.A and V of this Service Tariff shall be no lower than the rates charged by the Authority for the sale of hydroelectricity for the benefit of rural and domestic customers receiving service in accordance with the Niagara Redevelopment Act, 16 U.S.C. § 836(b)(1) (the "Rural/Domestic Rate"). This provision shall be implemented as follows: if the base rates, as determined in accordance with Sections III.A and V of this Service Tariff, are lower than the Rural/Domestic Rate on an average \$/MWh basis, each set of rates measured at 80% load factor which is generally regarded as representative for EP and RP Customers, then the base rates determined under Sections III.A and V of this Service Tariff will be revised to make them equal to the Rural/Domestic Rate on an average \$/MWh basis. However, the base rates as so revised will have no effect until such time as these base rates are lower than the Rural/Domestic Rate.

C. Monthly Base Rates Exclude Delivery Service Charges

The monthly base rates set forth in this Section III exclude any applicable costs for delivery services provided by the local electric utility.

D. Minimum Monthly Charge

The Minimum Monthly Charge shall equal the product of the demand charge and the Contract Demand (as defined herein). Such Minimum Monthly Charge shall be in addition to any NYISO Charges or Taxes (each as defined herein) incurred by the Authority with respect to the Customer's Allocation.

E. Estimated Billing

If the Authority, in its discretion, determines that it lacks reliable data on the Customer's actual demand and/or energy usage for a Billing Period during which the Customer receives Electric Service from the Authority, the Authority shall have the right to render a bill to the Customer for such Billing Period based on estimated demand and estimated usage ("Estimated Bill").

For the purpose of calculating a Billing Demand charge for an Estimated Bill, the demand charge will be calculated based on the Load Split Methodology that is applicable to the Customer as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated demand (kW) will be calculated based on an average of the Customer's Billing Demand (kW) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated demand (kW) value for the Estimated Bill will equal the Customer's takedown (kW) amount.
- For Customers whose Allocation is subject to a First through the Meter/ FTM, FTM Modified, or RP 2 LSM, the estimated demand (kW) value will equal the Customer's takedown (kW) amount.

For the purpose of calculating a Billing Energy charge for an Estimated Bill, the energy charge will be calculated based on the Customer's Load Split Methodology as follows:

- For Customers whose Allocation is subject to a Load Factor Sharing/LFS LSM, the estimated energy (kWh) will be based on the average of the Customer's Billing Energy (kWh) values for the previous three (3) consecutive Billing Periods. If such historical data is not available, then the estimated energy value (kWh) will be equal to the takedown (kW) amount at 70 percent load factor for that Billing Period.
- For Customers whose Allocation is subject to a First through the Meter/FTM, FTM Modified, or RP 2 LSM, the estimated energy (kWh) will be equal to the takedown (kW) amount at 100 percent load factor for that Billing Period.

If data indicating the Customer's actual demand and usage for any Billing Period in which an Estimated Bill was rendered is subsequently provided to the Authority, the Authority will make necessary adjustments to the corresponding Estimated Bill and, as appropriate, render a revised bill (or provide a credit) to the Customer.

The Minimum Monthly Charge provisions of Section III.D shall apply to Estimated Bills.

The Authority's discretion to render Estimated Bills is not intended and shall not be construed to limit the Authority's rights under the Agreement.

F. Adjustments to Charges

In addition to any other adjustments provided for in this Service Tariff, in any Billing Period, the Authority may make appropriate adjustments to billings and charges to address such matters as billing and payment errors, and the receipt of actual, additional, or corrected data concerning Customer energy or demand usage.

G. Billing Period

The Billing Period is any period of approximately thirty (30) days, generally ending with the last day of each calendar month but subject to the billing cycle requirements of the local electric utility in whose service territory the Customer's facilities are located.

H. Billing Demand

Billing Demand shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

I. Billing Energy

Billing Energy shall be determined by applying the applicable billing methodology to total meter readings during the Billing Period. See Section IV.E, below.

J. Contract Demand

The Contract Demand will be the amount of Expansion Power and/or Replacement Power, not to exceed the Allocation, provided by the Authority to the Customer in accordance with the Agreement

IV. General Provisions

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Availability of Energy

1. Subject to Section IV.B.2, the Authority shall provide to the Customer in any Billing Period Firm Energy associated with Firm Power. The offer of Firm Energy for delivery shall fulfill the Authority's obligations for purposes of this provision whether or not the Firm Energy is taken by the Customer.
2. In the event of an Adverse Water Condition, the rights and obligations of the Customer and Authority, including but not limited to such matters as Substitute Energy, Customer-Arranged Energy and responsibility for payment of costs associated therewith, will be governed by Article IX of the Agreement.

C. Delivery

For the purpose of this Service Tariff, Firm Power and Firm Energy shall be deemed to be offered when the Authority is able to supply Firm Power and Firm Energy to the Authority's designated NYISO load bus. If, despite such offer, there is a failure of delivery caused by the Customer, NYISO or local electric utility, such failure shall not be subject to a billing adjustment pursuant to Section 454.6(d) of the Rules.

D. Adjustment of Rates

To the extent not inconsistent with the Agreement, the base rates contained in this Service Tariff may be revised from time to time on not less than thirty (30) days written notice to the Customer.

E. Billing Methodology

Unless otherwise specified in the Agreement, the following provisions shall apply:

1. The billing methodology used to determine the amount of Firm Power and Firm Energy to be billed to the Customer related to its Allocation shall be Load Factor Sharing ("LFS") in a manner consistent with the Agreement and any applicable delivery agreement between the Authority and the Customer's local electric utility or both as determined by the Authority. An alternative billing methodology may be used provided the Customer and the Authority agree in writing and the Customer's local electric utility provides its consent if the Authority determines that such consent is necessary.
2. **Billing Demand** –The Billing Demand charged by the Authority to each Customer will be the highest 15 or 30-minute integrated demand, as determined by the Customer's local electric utility, during each Billing Period recorded on the Customer's meter multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer's local electric utility provides its consent if the Authority determines that such consent is necessary. Billing Demand may not exceed the amount of the Contract Demand.
3. **Billing Energy** –The kilowatt-hours charged by the Authority to each Customer will be the total number of kilowatt-hours recorded on the Customer's meter for the Billing Period multiplied by a percentage based on the LFS methodology, unless the Customer and the Authority agree in writing to an alternative billing methodology and the Customer's local electric utility provides its consent if the Authority determines that such consent is necessary.
4. With regard to LFS methodology calculations:
 - a. For every hour of the Billing Period, the Customer receives hydropower energy (Firm Energy) equal to the hourly metered load multiplied by the ratio of Customer's Contract Demand divided by the maximum hourly metered load value recorded in a given Billing Period, such ratio not to exceed the value of 1.
 - b. When the maximum hourly metered demand for the Billing Period is less than or equal to the Contract Demand, all of the Customer's metered load will be supplied by Firm Energy.
 - c. When the maximum hourly metered demand for the Billing Period is greater than the Contract Demand, the portion of the Customer's metered load to be supplied by Firm Energy is as follows:
 - i. For Customer with hourly billing: the sum of the values, for each hour of the Billing Period, of the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the hourly metered energy consumption.
 - ii. For Customer with monthly billing: the Contract Demand divided by the maximum hourly metered demand in the Billing Period multiplied by the total metered energy consumption during the Billing Period.
 - d. All demand values will be adjusted for losses.

F. Payment by Customer to Authority

1. Demand and Energy Charges, Taxes

The Customer shall pay the Authority for Firm Power and Firm Energy during any Billing Period the higher of either (i) the sum of (a), (b) and (c) below, or (ii) the Minimum Monthly Charge (as defined herein):

- a. The demand charge per kilowatt for Firm Power specified in this Service Tariff or any modification thereof applied to the Customer's Billing Demand (as defined in Section IV.E, above) for the Billing Period; and
- b. The energy charge per MWh for Firm Energy specified in this Service Tariff or any modification thereof applied to the Customer's Billing Energy (as defined in Section IV.E, above) for the Billing Period; and
- c. A charge representing reimbursement to the Authority for all applicable Taxes incurred by the Authority as a result of providing Expansion Power and/or Replacement Power allocated to the Customer.

2. Transmission Charge

The Customer shall compensate the Authority for all transmission costs incurred by the Authority with respect to the Allocation, including such costs that are charged pursuant to the OATT.

3. NYISO Transmission and Related Charges

The Customer shall compensate the Authority for the following NYISO transmission and related charges (collectively, "NYISO Charges") assessed on the Authority for services provided by the NYISO pursuant to its OATT or other tariffs (as the provisions of those tariffs may be amended and in effect from time to time) associated with providing Electric Service to the Customer:

- A. Ancillary Services 1 through 6 and any new ancillary services as may be defined and included in the OATT from time to time;
- B. Marginal losses;
- C. The New York Power Authority Transmission Adjustment Charge ("NTAC");
- D. Congestion costs inclusive of any rents collected or owed due to any associated grandfathered transmission congestion contracts as provided in Attachment K of the OATT;
- E. Any and all other charges, assessments, or other amounts associated with deliveries to Customers or otherwise associated with the Authority's responsibilities as a Load Serving Entity for the Customers that are assessed on the Authority by the NYISO under the provisions of its OATT or under other applicable tariffs; and

- F. Any charges assessed on the Authority with respect to the provision of Electric Service to Customers for facilities needed to maintain reliability and incurred in connection with the NYISO's Comprehensive System Planning Process (or similar reliability-related obligations incurred by the Authority with respect to Electric Service to the Customer), applicable tariffs, or required to be paid by the Authority in accordance with law, regardless of whether such charges are assessed by the NYISO or another party.

The NYISO Charges, if any, incurred by the Authority on behalf of the Customer, are in addition to the Authority production charges that are charged to the Customer in accordance with other provisions of this Service Tariff.

The method of billing NYISO charges to the Customer will be based on Authority's discretion.

4. Taxes Defined

Taxes shall be any adjustment as the Authority deems necessary to recover from the Customer any taxes, assessments or any other charges mandated by federal, state or local agencies or authorities that are levied on the Authority or that the Authority is required to collect from the Customer if and to the extent such taxes, assessments or charges are not recovered by the Authority pursuant to another provision of this Service Tariff.

5. Substitute Energy

The Customer shall pay for Substitute Energy, if applicable, as specified in the Agreement.

6. Payment Information

Bills computed under this Service Tariff are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by the Authority. The Authority may in its discretion change the foregoing account and routing information upon notice to the Customer.

7. Billing Disputes

In the event that there is a dispute on any items of a bill rendered by the Authority, the Customer shall pay such bill in full. If necessary, any adjustments will be made thereafter.

G. Rendition and Payment of Bills

1. The Authority will render bills to the Customer for Electric Service on or before the tenth (10th) business day of the month for charges due for the previous Billing Period. Such bills shall include charges for Electric Service, NYISO Charges associated with the Allocation (subject to adjustment consistent with any later NYISO re-billings to the Authority), and all other applicable charges, and are subject to adjustment as provided for in the Agreement, the Service Tariff and the Rules.
2. The Authority will charge and collect from the Customer all Taxes (including local, state and federal taxes) the Authority determines are applicable, unless the Customer furnishes the Authority with proof satisfactory to the Authority that (i) the Customer is exempt from the payment of any such Taxes, and/or (ii) the Authority is not obligated to collect such Taxes from the Customer. If the Authority is not collecting Taxes from the Customer based on the circumstances described in (i) or (ii) above, the Customer shall immediately inform the Authority of any change in circumstances relating to its tax status that would require the Authority to charge and collect such Taxes from the Customer.
3. Unless otherwise agreed to by the Authority and the Customer in writing, the Authority will render bills to the Customer electronically.
4. Payment of bills by the Customer shall be due and payable by the Customer within twenty (20) days of the date the Authority renders the bill.
5. Except as otherwise agreed by the Authority in writing, if the Customer fails to pay any bill when due an interest charge of two percent of the amount unpaid will be added thereto as liquidated damages, and thereafter, as further liquidated damages, an additional interest charge of one and one-half percent of the sum unpaid shall be added on the first day of each succeeding Billing Period until the amount due, including interest, is paid in full.
6. If at any time after commencement of Electric Service the Customer fails to make complete payment of any two (2) bills for Electric Service when such bills become due pursuant to Agreement, the Authority shall have the right to require that the Customer deposit with the Authority a sum of money in an amount equal to all charges that would be due under this Agreement for Electric Service for two (2) consecutive calendar months as estimated by the Authority. Such deposit will be deemed security for the payment of unpaid bills and/or other claims of the Authority against the Customer upon termination of Electric Service. The failure or refusal of the Customer to provide the deposit within thirty (30) days of a request for such deposit will be grounds for the Authority in its discretion to suspend Electric Service to the Customer or terminate the Agreement.

Unless otherwise agreed to by the Authority and the Customer in writing, in the event the Customer disputes any item of any bill rendered by Authority, the Customer shall pay such bill in full within the time provided for by this Agreement, and adjustments, if appropriate, will be made thereafter.

H. Adjustment of Charges – Distribution Losses

The Authority will make appropriate adjustments to compensate for distribution losses of the local electric utility.

I. Conflicts

In the event of any inconsistencies, conflicts, or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of the Agreement and this Service Tariff or the Rules, the provisions of the Agreement shall govern.

V. Annual Adjustment Factor

A. Adjustment of Rates

1. The AAF will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the AAF. The AAF will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year, subject to a maximum adjustment of $\pm 5.0\%$ (" $\pm 5\%$ Collar"). Amounts outside the $\pm 5\%$ Collar shall be referred to as the "Excess."

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual price (as measured in cents/kWh) for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

2. Annual Adjustment Factor Computation Guide

- Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.
- Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the AAF.
- Step 3: Commencing RY 2014, modifications to the AAF will be subject to $\pm 5\%$ Collar, as described below.
- a) When the AAF falls outside the $\pm 5\%$ Collar, the Excess will be carried over to the subsequent RY. If the AAF in the subsequent RY is within the $\pm 5\%$ Collar, the current RY Excess will be added to/subtracted from the subsequent Rate Year's AAF, up to the $\pm 5\%$ Collar.

- b) Excesses will continue to accrue without limit and carry over such that they will be added to/subtracted from the AAF in any year where the AAF is within the $\pm 5\%$ Collar.

Step 4: Multiply the current Rate Year base rate by the AAF calculated in Step 2 to determine the new Rate Year base rate.

The foregoing calculation shall be performed by the Authority consistent with the sample presented in Section V.B below.

3. Subject to the provisions of Section III.A of this Service Tariff, the Authority shall provide the Customer with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 15th of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.
4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended to reflect, the Customer and the Authority may mutually select a substitute Index. The Customer and the Authority agree to mutually select substitute indices within 90 days, once one of them is notified by the other that the indices are no longer available or no longer reflect the relevant factors or changes which the indices were intended to reflect. Should the 90-day period cover a planned July 1 rate change, the current base rates will remain in effect until substitute indices are selected and the adjusted rates based on the substitute indices will be retroactive to the previous July 1. If the Customer and Authority are unable to reach agreement on substitute indices within the 90-day period, the Customer and the Authority agree to substitute the mathematic average of the PPI—Intermediate Materials, Supplies and Components (BLS Series ID WPUSOP2000) and the PPI-- Finished Goods (BLS Series ID WPUSOP3000) indices for one or more indices that have ceased to be available or reflective of their intended purpose and shall assume the percentage weighting(s) of the one or more discontinued indices as indicated in Section V.A.1.

B. Sample Computation of the AAF (hypothetical values for July 1, 2014 implementation):

STEP 1

Determine the Index Value for the Measuring Year (MY) and Measuring Year - 1 (MY-1) for Each Index

- Index 1 - Producer Price Index, Industrial Power

	Measuring Year (2013)	Measuring Year - 1 (2012)
January	171.2	167.8
February	172.8	167.6
March	171.6	168.2
April	173.8	168.6
May	175.1	171.6
June	185.7	180.1
July	186.4	182.7
August	184.7	179.2
September	185.5	181.8
October	175.5	170.2
November	172.2	168.8
December	171.8	166.6
Average	177.2	172.8
Ratio of MY/MY-1		1.03

- Index 2 – EIA Industrial Rate

<u>State</u>	<u>Revenues</u> ((\$000s)	<u>Sales</u> (MWh)	<u>Avg. Rate</u> (cents/kWh)
<u>Measuring Year (2012)</u>			
CT	590,972	6,814,757	
MA	1,109,723	13,053,806	
ME	328,594	4,896,176	
NH	304,363	2,874,495	
NJ	1,412,665	15,687,873	
NY	2,001,588	26,379,314	
OH	3,695,978	78,496,166	
PA	3,682,192	63,413,968	
RI	152,533	1,652,593	
VT	<u>155,903</u>	<u>2,173,679</u>	
TOTAL	13,434,511	215,442,827	6.24

Measuring Year -1 (2011)

CT	579,153	6,678,462	
MA	1,076,431	12,662,192	
ME	310,521	4,626,886	
NH	298,276	2,817,005	
NJ	1,370,285	15,217,237	
NY	1,891,501	24,928,452	
OH	3,622,058	76,926,243	
PA	3,571,726	61,511,549	
RI	144,144	1,561,700	
VT	<u>152,785</u>	<u>2,130,205</u>	
TOTAL	13,016,880	209,059,931	6.23

Ratio of MY/MY-1 **1.00**

- Index 3 – Producer Price Index, Industrial Commodities Less Fuel

	Measuring Year (2013)	Measuring Year -1 (2012)
January	190.1	187.2
February	190.9	188.0
March	191.6	188.7
April	192.8	189.9
May	194.7	191.8
June	195.2	192.3
July	195.5	192.3
August	196.0	193.1
September	196.1	193.2
October	196.2	193.8
November	196.6	193.7
December	196.7	194.0
Average	194.4	191.5
Ratio of MY/MY-1		1.02

STEP 2

Determine AAF by Summing the Weighted Indices

<u>Index</u>	<u>Ratio of MY to MY-1</u>	<u>Weight</u>	<u>Weighted Factors</u>
PPI Industrial Power	1.03	0.35	0.361
EIA Industrial Rate	1.00	0.40	0.400
PPI Industrial Commodities less fuel	1.02	0.25	<u>0.255</u>
AAF			1.016

STEP 3

Apply Collar of $\pm 5.0\%$ to Determine the Maximum/Minimum AAF.

$-5.0\% < 1.6\% < 5.0\%$; collar does not apply, assuming no cumulative excess.

STEP 4

Apply AAF to Calculate the New Rate Year Base Rate

	<u>Demand</u> \$/kW-mo.	<u>Energy</u> \$/MWh
Current Rate Year Base Rate	7.56	12.91
New Rate Year Base Rate	7.68	13.12

NIAGARA FALLS WATER BOARD RESOLUTION # 2019-01-006

REPAIR OF 16-INCH PIPING AT GORGE PUMPING STATION

WHEREAS, a certain portion of a 16-inch piping at the Gorge Pumping Station must be repaired or replaced in order to keep necessary equipment functioning; and

WHEREAS, Mollenberg-Betz, Inc., has presented a quote dated December 14, 2018 in the amount of \$15,100 to erect furnish the necessary labor and material to complete the repair;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board be and is hereby authorized to pay to Mollenberg-Betz, Inc., up to \$15,100 to complete repairs to the 16-inch piping at the Gorge Pumping Station.

Water Board Personnel Responsible for Implementation of this Resolution:
Executive Director

Water Board Budget Line or Capital Plan Item with Funds for this Resolution:

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to the Board



MOLLENBERG-BETZ INC

JOE HIGGINS
SERVICE PROJECT MANAGER
300 SCOTT STREET
BUFFALO, NY 14204
jhiggins@mollenbergbetz.com

P: (716) 614-7450 x 212
F: (716) 614-7467
www.mollenbergbetz.com



To:	Niagara Falls Water Board	Fax:	
Attn:	Joe Argona	Date:	December 14, 2018
From:	Joe Higgins	Pages:	1
Re:	Gorge 16" Pipe Repair	Quote #:	HJ2018-157

☐ Urgent
 ☒ For Review
 ☐ Please Comment
 ☐ Please Reply
 ☐ Please Recycle

Dear Joe:

Mollenberg-Betz, Inc. is pleased to submit the following proposal for the above referenced project per the Scope of Work, Pricing, and the following Notes and Exceptions. This work shall be completed on a time and material basis and invoiced as per the In-Plant Mechanical Maintenance contract. This is for budget purposes. The scope of our proposal is detailed below:

Scope of Work

- ▶ Lock out pumps and valves while being serviced.
- ▶ Mobilize site the day before installation.
- ▶ Furnish and install (1) 16" tee.
- ▶ Furnish and install (1) 16" flanged non-rising stem gate valve.
- ▶ Furnish and install (1) 16" x 2" flange for clean out.
- ▶ Furnish and install 2" stainless steel ball valve for flushing.
- ▶ Furnish and install necessary support for tee.
- ▶ Provide support as needed for new tee.
- ▶ NFWB personnel will have the bolts broken free prior to our arrival

Budget Pricing

Labor	\$3,800.00
Material	\$11,300.00
Total	\$15,100.00

Notes and Exceptions

1. **Sales or use taxes are not included in our pricing.** If applicable they will be added to the quoted price. If the project is treated as a capital improvement, the quoted price will increase by the cost of the use tax incurred by Mollenberg-Betz.
2. This quote is for scope as described. Any additional parts or materials which may be required beyond this scope would be billed extra. We would discuss any additions with you before proceeding.
3. We have not included freight or over time in this proposal
4. Washington DC is proposing tariffs on certain imported products and particularly on steel and steel pipe. As such, we are struggling to obtain firm pricing for these products. Price(s) included in this proposal shall remain in effect for five (5) days from the date of this proposal. Thereafter, Mollenberg-Betz may in good faith adjust such prices to reflect increases in the costs or availabilities of such price components. Any surcharges from our suppliers at the time of shipping will be added to the costs of this proposal.

Sincerely,

MOLLENBERG-BETZ, INC.

Joe Higgins
Service Project Manager

NIAGARA FALLS WATER BOARD RESOLUTION # 2019-01-007

SYNCHRONOUS ELECTRIC MOTOR FOR INTERMEDIATE PUMP

WHEREAS, a the synchronous electric motor on one of the four intermediate pumps at the wastewater treatment plant requires replacement; and

WHEREAS, this pump must be maintained in good condition in order to supply primary treated wastewater to the carbon filter beds for further treatment; and

WHEREAS, Volland Electric Equipment Co., has presented a quote dated December 19, 2018 in the amount of \$11,852 to furnish the necessary motor;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board be and is hereby authorized to pay to Volland Electric Equipment Co. \$11,852 for the required synchronous electric motor.

Water Board Personnel Responsible for Implementation of this Resolution:
Executive Director

Water Board Budget Line or Capital Plan Item with Funds for this Resolution:

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to the Board

Volland Electric Equipment Co
Mead Supply Division
Buffalo New York, 14227
Phone No. (716) 656-9900
Fax No. (716) 656-8899

Page: 1
December 19, 2018

Sales Quote Number: SQ87586

SALES QUOTE

Sell

To: NIAGARA FALLS WATER BOARD
Neil Zysk
WASTE WATER TREATMENT
1200 BUFFALO AVE
NIAGARA FALLS, NY-14303

Ship

To: NIAGARA FALLS WATER BOARD
WASTE WATER TREATMENT PLANT
1200 BUFFALO AVE
NIAGARA FALLS, NY-14303

*** For your Convenience, we now accept Visa, Mastercard and American Express ***

Ship Via BESTWAY
Terms 1% 10 DAYS NET 30
SalesPerson 78S

Customer ID N0330
Ref SYNC-RITE
Freight 02/FRT APPLICABLE/S

Item No.	Description	Quantity	Unit	Unit Price	Total Price
QMISC	840D711G02 WEG SYNC-RITE PLUS	1	EACH	11,852.00	11,852.00

DELIVERY: 3- 5 WEEKS

Standard Terms and Conditions Apply.
Accepted By: _____

Thank You for the opportunity to be of service. We look
forward to working with you.

By: JIM RILEY (x1213)

NIAGARA FALLS WATER BOARD RESOLUTION # 2019-01-008

**EXEMPT AND HOURLY EMPLOYEES NOT COVERED BY
A COLLECTIVE BARGAINING AGREEMENT TO USE
TIME MANAGEMENT SYSTEM EFFECTIVE IMMEDIATELY**

WHEREAS, the Niagara Falls Water Board (“Water Board”) has invested in a state-of-the-art time and attendance management system that will permit efficient and accurate recording of time and may be used to create mustering reports in the event of an emergency; and

WHEREAS, certain of the Water Board’s employees who are exempt from the overtime provisions of the Fair Labor Standards Act have been using the system as part of a trial run/test; and

WHEREAS, the Water Board recognizes that certain of its professional employees perform substantial services off premises or work flexible schedules, but verification of at least most of the hours worked is necessary to be certain that leave time properly is utilized and for NYS Retirement System reporting;

* CONTINUED ON NEXT PAGE *

NOW THEREFORE BE IT

RESOLVED, that effective immediately, all Niagara Falls Water Board employees who are not covered by a collective bargaining agreement shall log in using the time and attendance management system when beginning their workday, and shall log out using the time and attendance management system when departing for the day; and

AND IT IS FURTHER RESOLVED, that an employee who has not received prior written authorization from the Director of Administrative Services misses a log in or log out must email an individual to be designated by the Director of Administrative Services with a written explanation for the failure and the verifiable time that they began or ended the work day; and

AND IT IS FURTHER RESOLVED, that employees covered by this resolution who through neglect of duty or insubordination miss without permission more than a total of three log in or log outs in any 21-day period shall be subject to disciplinary action.

Water Board Personnel Responsible for Implementation of this Resolution:

Director of Administrative Services

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to Board

NIAGARA FALLS WATER BOARD RESOLUTION # 2019-01-009

WATER TREATMENT PLANT TRANSFER SWITCH SERVICE

WHEREAS, the 5kV paralleling switchgear and generator control system at the Water Treatment Plant requires annual preventative maintenance to ensure its continued safe and reliable operation; and

WHEREAS, GE Zenith Controls, Inc., has presented a firm fixed price proposal of \$15,004 to complete the preventative maintenance services;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board be and is hereby authorized to pay to GE Zenith Controls, Inc., the sum of \$15,004 to complete annual preventative maintenance services on the 5kV paralleling switchgear and generator control system at the Water Treatment Plant.

Water Board Personnel Responsible for Implementation of this Resolution:
Director of Operations

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to the Board

BUYERS INFORMATION:

Quote Requested by	Nick Coyle
Company	Niagara Falls Water Board Wastewater Treatment Plant
Address	1200 Buffalo Ave Niagara Falls, NY 14304
Phone	716-471-1172
Email	Ncoyle@nfwb.org
BUYER PO NO.	
SAP #	

NOTICE: This quotation is void unless accepted within 30 days from date hereof and is subject to change upon notice. However, if ABB elects to perform the services covered by the quotation, in response to an order placed 30 or more days after the date of the quotation, the terms of the quotation will apply.

QUOTATION NO.	PQ-437511
DATE	December 10, 2018

SUBMIT PURCHASE ORDER TO:
GE ZENITH CONTROLS, INC.:

GE Contact	Rudolph Duncan
Address	601 Shiloh Road Plano, TX 75074
Phone	773-452-0140
Mobile	
Email	rudolph.duncan@us.abb.com

REMIT PAYMENT TO:
GE ZENITH CONTROLS, INC.
PO Box 402497
Atlanta, GA 30384-2497

Work Services Description

GE Zenith Controls, Inc., a subsidiary of ABB Inc., is pleased to offer this proposal for the Annual Preventative Maintenance of the listed equipment located at:

Niagara Falls Wastewater Treatment Plant
1200 Buffalo Ave
Niagara Falls, NY 14304
(Job Reference #Y375)

Scope of Supply:

1. Services:
 - a. Equipment to be serviced:

Perform preventative maintenance services on the Switchgear System listed below:

 - 5kV Paralleling Switchgear and Generator Control Systems (project #Y375, S/N 231647)
 - One (1) Low Voltage Generator Control Panel line up
 - One (1) 5kV Paralleling Switchgear line up
 - 5kV MVATS (Qty 1)
 - Automatic Transfer Switch (Qty 2)
 - b. Statement of Work:
 - Generator Paralleling Switchgear and Control (typical of 2)
 1. Visually inspect the switchgear for damage and any unsafe operational conditions.
 2. Verify that the equipment installation complies with O&M documentation.
 3. Enclosure is properly secured to wall or floor.
 4. Verify that the equipment ground connection is properly terminated.
 5. Equipment interior is clear of debris and unit may be operated.
 6. Test all lights and fuses.
 7. Verify with site personnel that equipment may be cycled/operated and occasional service interruptions are acceptable.
 8. Place the engine-generator units in the AUTOMATIC POSITION and verify that they may be started and operated under load.
 9. Measure and record bus voltage and frequency (at meters).
 10. Verify all meters are operational and properly displaying values.
 11. Test DC source inputs for proper values.
 12. Test the PLC batteries.
 13. Verify proper operations and values of any protection relays.

14. Verify the Master Operator Interface Panel (OIP) is operational and all settings and values are correct.
 15. Perform a complete test in MANUAL mode.
 16. Perform a complete test in AUTOMATIC mode.
 - i. Verify proper sequencing of the electrically operated breakers.
 - ii. Verify proper operations and sequencing of the generator breakers.
 - iii. Verify proper operation of the synchronizing controls.
 - iv. Verify proper operation of the load sharing controls.
 - v. Verify operation of the load optimization (if utilized and active).
 - vi. Verify automatic start and stop control.
 - vii. Verify proper status and alarming conditions.
 17. Measure and record transfer results including time periods.
 18. Adjust system time delays if necessary and review sequence with on-site personnel.
 19. Recorded values of all measurements taken, voltages, amperage and frequency.
 20. Note any field adjustments.
 21. Note any recommendations relative to repairs or upgrades.
 22. 6-month parts and labor limited warranty period on any repairs performed.
- Electrically Operated Low Voltage System Breaker Inspection (typical of four)
 1. Verify that circuit breaker metering values (voltage, current, power, etc.) look correct for the application (Adequate site load must be provided – i.e. For LV, a minimum of 20% of Trip Unit rating is needed),
 2. If requested, record values of breaker metering, as applicable (i.e. voltages, current, power, etc.)
 3. Verify that the equipment ground connection is properly terminated.
 4. Verify any shunt trip, closing and charging power sources are available and operational
 5. Perform a manual-electrical operation of the circuit breaker. (Equipment may be de-energized and/or site loads may be affected)
 6. Perform a manual-mechanical operation of the circuit breaker. (Equipment may be de-energized and/or site loads may be affected)
 7. Ensure proper charging of the circuit breaker
 8. Verify circuit breaker can be tripped by its lockout or protective relay, as applicable.
 9. Verify proper racking in and out of the circuit breaker. (Equipment must be de-energized and/or site load may be affected)
 10. Lubricate circuit breaker stabs and racking mechanism, if needed. (Equipment must be de-energized and/or site load may be affected))
 11. Verify proper breaker face cover flag indication of breaker status, charge status and breaker position.
 12. Verify proper breaker status, position and lockout lights and/or any graphic indication
 13. Note any field adjustments and/or comments
 14. Note any recommendations relative to repairs or upgrades.
 - Automatic Transfer Switch (typical of 2)
 1. Verify that the equipment installation complies with the O&M documentation.
 2. Enclosure is properly secured to the wall or floor.
 3. Equipment interior is clear of debris and unit may be safely transferred.
 4. Verify with site personnel that equipment may be transferred and occasional service interruptions are acceptable.
 5. Verify with site personnel that the engine-generators and associated switchgear system are in the AUTOMATIC POSITION and may be started and operated under load.
 6. Verify that the transfer switch nameplate values are correct with the application (voltage, current, etc.).

7. Verify that the equipment ground connection is properly terminated.
 8. Torque main lug and cable terminals for S1 and S2 connections.
 9. Verify that the phase rotations of both sources are matched.
 10. Perform a MX Controller calibration for S1 and S2 source voltages.
 11. Measure and record S1 voltage and frequency.
 12. Measure and record S2 voltage and frequency.
 13. Measure and record a millivolt drop test across the movable contact assemblies.
 14. Verify the engine start connections are properly terminated.
 15. Verify any customer auxiliary contacts are properly terminated (position, pre-signal, etc.).
 16. Verify the load add and shed control circuits are properly terminated.
 17. Review communications connections to an external SCADA or Building Automation System if applicable.
 18. Perform a NO-LOAD TEST of the transfer switch through the MX Controller.
 19. Perform a FAST LOAD TEST or LOAD TEST of the transfer switch through the MX Controller.
 20. Measure and record transfer results including time periods.
 21. Adjust time delays if necessary and review sequence with on-site personnel.
 22. Perform a second LOAD TEST of the transfer switch. With the transfer switch in the S2 position, open the S2 source breaker and verify immediate re-transfer to the S1 position.
 23. Recorded values of all measurements taken, voltages, amperage, frequency and millivolt.
 24. Note any field adjustments.
 25. Record MX Controller transfer log details.
 26. Note any recommendations relative to repairs or upgrades.
- Medium Voltage Automatic Transfer Switch (typical of 1)
 1. Verify that the equipment installation complies with the O&M documentation.
 2. Enclosure is properly secured to the wall or floor.
 3. Equipment interior is clear of debris and unit may be safely transferred.
 4. Verify with site personnel that equipment may be transferred and occasional service interruptions are acceptable.
 5. Verify with site personnel that the engine-generators and associated switchgear system are in the AUTOMATIC POSITION and may be started and operated under load.
 6. Verify that the transfer switch nameplate values are correct with the application (voltage, current, etc.).
 7. Verify the breaker status lights are operational.
 8. Verify the engine start connections are properly terminated.
 9. Verify any customer auxiliary contacts are properly terminated (position, pre-signal, etc.).
 10. Verify any load add and shed control circuits are properly terminated if applicable
 11. Review communications connections to an external SCADA or Building Automation System if applicable.
 12. Perform a NO-LOAD TEST of the transfer switch through the MX Controller.
 13. Perform a LOAD TEST of the transfer switch through the MX Controller.
 14. Measure and record transfer results including time periods.
 15. Adjust time delays if necessary and review sequence with on-site personnel.
 16. Perform a second LOAD TEST of the transfer switch. With the transfer switch in the S2 position, open the S2 source breaker and verify immediate re-transfer to the S1 position.
 17. Recorded values of all measurements taken, voltages, amperage and frequency.
 18. Note any field adjustments.

19. Record MX Controller transfer log details.
20. Note any recommendations relative to repairs or upgrades.
- c. Upon the conclusion of the maintenance services, a final Service Report will be supplied to the Buyer for distribution to the facility.
- d. It is anticipated that one (1) technician will be on site for **6 days** to perform the services described above.
2. Exceptions:
 - a. This proposal is based upon normal weekday work, 7a-6p. Any requirements for weekend or Overnight/OT work will require a change order or need to be requested.
 - b. This proposal does not include any upstream or downstream equipment. It is only for the equipment listed above.
3. Schedule:
 - a. The FSE will travel on Monday, be on site Tuesday-Friday and travel on Saturday.
 - b. Estimated schedule date provided After Acknowledgement of Order.
 - c. Please note that an advanced notice of 3 weeks is required for assigning Field engineering resources.

Price, Terms and Conditions

ABB will accomplish the above-described work scope for the firm fixed price of **\$15,004**.

- a. Price is valid for work completed by 12/31/19
- b. Invoices to be issued as follows:
 - \$1,281 shall be invoiced upon receipt of the PO from Niagara Falls Water Board
 - \$13,723 shall be invoiced upon completion of 2019 annual preventative maintenance services of the Switchgear. Services are to be completed prior to 12/31/19.
- c. Payment Terms: Net 30 days from the date of invoice.
- d. Pricing does not include any applicable taxes, permits and licensing fees.
- e. Provide an additional 10% discount on labor services performed on the referenced systems prior to 12/31/19.
- f. Provide an additional 15% discount on parts and components purchased and supplied for the referenced systems prior to 12/31/19.

The sale of any service and products, and the integration thereof, ordered by the Buyer is expressly conditioned upon the terms and conditions contained in this quotation and Terms and Conditions for Sale of Products and Services Form ES 104 (Rev 4) ("Terms and Conditions") as attached hereto. Any additional or different terms and conditions proposed by the Buyer at any time are expressly objected to and will not be binding upon ABB unless specifically agreed to in writing by ABB's authorized representative. Any order for, or any statement of intent to purchase hereunder, or any direction to perform work and ABB's performance of work shall constitute assent to the Terms and Conditions. Oral agreements and/or commitments to perform services are not enforceable.

Additional Services

Should the Buyer desire to have ABB perform additional services beyond the scope of services described in this proposal, a change order request will be submitted for the additional associated costs. No additional services shall proceed without written authorization from the Buyer. Additional services will be performed per our published rates for Service, applicable at the time that work is performed, including work that extends through the weekend / holiday. The current rates for Service can be found in Attachment "A".

Buyer's Responsibilities

The Buyer's responsibilities shall include, but are not limited to, the following:

- Issue switching orders, schedule outages, and de-energize the electrical apparatus, including Lock-Out Tag-Out (LOTO) of all systems associated with ABB's work scope involved in the project. LOTO procedures shall meet or exceed Contractor or ABB's requirements, whichever are more stringent.
- Prior to the start of the on-site work, Buyer shall familiarize ABB personnel with their safety practices, regulations in effect at jobsite, and any chemical and physical hazards, including process safety issues

associated with the work environment. ABB shall be under no obligation to commence work unless safety practices are acceptable to ABB. As a safety precaution, prior to the commencement of work, access to a nearby telephone with the ability to call outside the facility will be provided by Buyer, as well as telephone numbers for local emergency services.

- Buyer will dispose of all wastes generated at the work site. Buyer will be responsible for environmental conditions and will keep the equipment free of contaminants that would be detrimental to the performance of the equipment.
- Buyer shall be responsible for the removal and replacement of any obstructions that may interfere with access to or removal of the existing equipment
- Buyer will provide an experienced electrician or electrical supervisor familiar with the power distribution system and trained in electrical safety and emergency response procedures including CPR, AED, and first aid for purposes of:
 - Directing ABB personnel in identifying and isolating the proper electrical equipment.
 - Shutting down electrical equipment in an emergency and providing emergency response during high risk operations including electrical work when a single ABB representative is dispatched. This person must be visually present during all electrical work and high risk operations. If not present then ABB will stop work and notify the Buyer.
 - Complying with OSHA 1910.269(l)(1) and 1910.269(b)
- Buyer will provide all “special” maintenance tools including; closing handles, test couplers, closing jacks, lifting devices, breaker cars/lift trucks, etc., furnished or defined by the original equipment manufacturer(s).
- Buyer shall provide one (1) copy of existing system schematics, drawings and other information regarding the equipment/site that is needed, and be responsible for the accuracy of same and verbal information concerning existing conditions and wiring.
- All communication between, including meetings, all documents, notes on drawings, and submissions required under contract, shall be in the English language. Any language translation, of required, will be the responsibility of the Buyer.
- Buyer must supply minimum power supply of 120V, 1-Phase, power source, if necessary.
- Buyer will provide/operate/maintain services for drinking water, sanitary facilities, parking, trash containers, and lighting.
- Buyer to provide craft labor with tools and equipment to assist field engineer working on site, if necessary.
- Buyer to supply, operate, and maintain all standard services to the site facility, such as electric power, lighting, water, air, etc., if required. Backup for these systems is not included in this proposal. These services are to be made available to ABB, including a suitable source of 60Hz 120/240 volts AC, unless otherwise provided herein.
- Buyer to provide, and be responsible for, applicable codes, standard, laws, regulatory requirements, etc. required for the development of functional specification and system design and operation.
- Buyer shall be responsible for the review of the installation to assure compliance with applicable codes. It is the intention of ABB to comply with the applicable codes, standards, laws, regulatory requirements, etc.; however, by law it is the responsibility of the Buyer for compliance of the total installation. ABB would be pleased to quote any additional features or equipment that the Buyer deems necessary to meet these requirements.
- Verify sufficient fuel is available to operate the engine-generators for a minimum of two (2) hours.

Assumptions and Clarifications

- Any items or services not specifically outlined herein are not included.
- ABB assumes and is relying on the fact that any information furnished by Buyer is accurate and complete. To the extent that ABB obtains actual knowledge of any conditions with the equipment and/or the conditions at site are in addition to and/or different from those indicated in the Buyer's furnished documentation / information and/or there is a previously unknown physical condition that is found with the equipment and/or at the site, ABB shall notify the Buyer. If such condition(s) exist and this causes an increase in ABB's cost of and/or the time required for the performance of any part of the work under a

contract, an equitable adjustment may be made, including without limitation, to the price and/or schedule.

- With the exception of delays beyond the control of ABB, no additional work scope shall proceed without the written authorization of the Buyer.
- Should any unforeseen work delays beyond the control of ABB occur, including those as a result of malfunctions or deficiencies encountered with the equipment (unless caused by ABB) or should the Buyer desire to have ABB perform work beyond the scope of work described in this proposal, that work will be billed at the published rates in effect at the time of performance of that the work scope and will apply to all ABB project management, field engineers, field engineering service technicians and/or craftsmen.
- ABB expressly objects to any requirements, methods or conditions contained in any Buyer request that are not specifically addressed in this document, and such requirements, methods and conditions, if any, are outside the scope of this proposal.
- Schedule: Unless otherwise stated in the scope, all work will be performed on a straight time basis. All work is to be performed on a mutually agreeable schedule. The foregoing work as described under work scope shall be performed during normal working hours Monday through Friday, Holidays excepted. If work is performed on an overtime basis, the premium for the time spent and other applicable cost will be billed in addition to the price quoted and will be billed at our published rates in effect at the time work is performed. Time and expense of ABB employees' travel from their headquarters to work site and return, shall be considered as time worked. ABB requires a minimum two (2) weeks advance notice to ensure availability of resources.
- The services shall be considered "Substantially Complete" when the services to be performed by ABB or the designated portion thereof, are sufficiently complete in accordance with the contract documents, so that the Buyer can occupy or use the services or portion thereof for its/their intended use. For products only order, "substantially complete" shall mean the date of shipment of the products. A "Punchlist" is to be developed upon "Substantial Completion," and ABB's standard warranty shall provide coverage (when applicable) for issues that occur after "Substantial Completion. "Final Project Completion" shall be reached when all contractual responsibilities have been met and the final bill issued.

GE ZENITH CONTROLS, INC.

By:	Nicki Knox		
Title:	Switchgear Technical Proposal Manager		
Email:	nicki.knox@us.abb.com		
Phone:	312-533-2020	Mobile:	312-605-6589

BUYER:

Company:			
By:			
Title:			
Email		Date:	

This proposal and specification are submitted in confidence solely for use in consideration of the merits of the offering and for no other direct or indirect use by Buyer and its contents are proprietary to ABB. In taking receipt of this document, Buyer agrees not to reveal its contents except to those in its own organization who must evaluate it, to use this document and the information that it contains exclusively for the above-stated purpose and to avoid disclosure of the information to competitor of ABB.



COMMERCIAL RATES - EFFECTIVE: JULY, 2018

8-Hour Daily Rates U.S. Dollar

SERVICE DESCRIPTION	WEEKDAY	SATURDAY	SUNDAY / Holiday
Field Services			
Field Engineer	\$2,155	\$3,118	\$4,074
Specialized Field Engineer	\$2,619	\$3,815	\$4,998
Service Center			
Service Technician	\$1,691	\$2,442	\$3,146
Service Tech Work Leader	\$1,771	\$2,542	\$3,306
Service Center Specialist	\$2,147	\$3,106	\$4,058
Phone Support			\$1,300/case
Critical Power Emergency Standby Retainer			\$2,200/month

Tooling Rates

IR Camera	\$75/day, \$300/week
Vibration Test Set	\$125/day, \$500/week
Online Motor Test Set	\$250/day, \$1,000/week
Offline Motor Test Set	\$250/day, \$1,000/week
Primary Current Injection Set	\$350/day, \$1,400/week
Relay Test Set	\$500/day, \$2,000/week
Power Factor Test Set	\$500/day, \$2,000/week
Vacuum Oil Processor	\$2,500/day

Field Engineer

Service is technical advice and counsel from field personnel based on sound engineering, manufacturing, installation, and operation practices as applicable to the equipment. Such services may include analysis, adjustment, programming, and other similar services. They do not include supervision or management of purchaser's employees, agents or other contractors and do not include design effort.

Specialized Field Engineer

These services include installation, commissioning, repair, service, maintenance, and upgrade work associated with:

- Medium voltage motors, & generators
- Paralleling Switchgear
- Synchronous motors & generators, including excitation
- Medium voltage drives
- Legacy drive products, including: DC/AC2000, DC/DV/AC300, Innovation, Siltron & Valutrol
- Legacy control systems including: Series 5 & Series 6
- Specialty power system studies, including: Harmonic, Transient Switching & Grounding
- Shipboard and offshore work, with a minimum 14-hour / day billing. Platform work requires a pay differential.

Service Center

Service Technician: Craftsmen experienced in the inspection, test, installation, service, and repair of one or more of the following equipment types:

- Transformer (Mechanical, Electrical, Fluid & LTC)
- Motors, Drives & Controls Equipment
- Switchgear
- Mechanical
- Hydro (Electrical, Mechanical & Controls)

Service Center Work Leader: Provides on-site and in shop, hands on leadership of ABB craftsmen on a per shift basis.

Service Center Specialist: Provides overall coordination and technical leadership on-site and in shop of service craftsmen and Work Leaders.

ABBs' field service engineers and consulting experts are on call to provide a wide range of service and repairs on both ABB and non-ABB equipment and engineered systems in Industrial and Balance-Of-Plant Power Plant Systems.

For more information contact your local ABB office or call our 24x7 customer service center at 888-434-7378 or 540-387-8617.

Typical Installations, Services, Repairs, and Products:

- Transformer (Including Mechanical, Electrical, Fluid & LTC)
- Power Delivery Equipment
- Motors, Drives and Controls Equipment
- Distributed Control Systems and Programmable Logic Controls
- Instrumentation Related to Process Control and Automation Systems
- Marine Electrical Systems
- Power System Studies

Rate Terms

1. Work greater than 8 hours per day is billed per hour: **Overtime Double Time**

Field Engineer	\$359.00	\$478.00
Specialized Field Engineer	\$446.00	\$594.00
Service Technician	\$272.00	\$362.00
Service Tech Work Leader	\$287.00	\$382.00
Service Center Specialist	\$357.00	\$476.00

For less than 24-hour response, a 1.35 multiplier is used for daily, overtime and double time rates.

Overtime applies to billable weekday hours 9-12. Double Time applies to: Billable weekday hours greater than 12, Saturday hours greater than 8, Sundays and holidays.

2. Preparation, travel, and report writing time will be charged at the applicable rate (i.e., daily rates, overtime and double time) on a round trip basis with point of departure based on the location of the ABB Representative's office/service center.
3. Additional travel and living expenses include:

Overnight stay	\$160 per day
Air Travel / Rental Car charges	Cost + 20%

Notes: Additional T&L charges may apply for high cost of living areas.
4. Travel and living expenses outside the continental U.S.A., will be billed at a cost plus 20% minimum, or consult with your local ABB representative for a local per diem rate.
5. Materials, subcontract labor and equipment required to support ABB will be provided at cost + 35%.
6. All equipment is F.O.B. shipping point, seller's dock, with freight prepaid and charged 3% of material price (a minimum per shipment charge of \$100.00 shall apply). Seller reserves the right to select the method of transportation provided for all products unless specified by the client not less than 72 hours prior to shipment. Any premium transportation or required special handling is in addition and shall be for the account of the Buyer.
7. Consult with local ABB office to determine applicable charges for other special tooling and/or test equipment or any taxes, fees or VAT that may be in addition to the above rates. Minimum daily billing of 8 hours for all services provided including standby time. A minimum order of \$500.00 shall apply for a parts/material only order.
8. All rates are for hours worked, traveled, or on standby and are based on ABB's standard terms and conditions of sale (Form ES 104 Rev 4). Price and data subject to change without notice. This quotation is not valid for PCB services, off shore or confined locations.
9. Phone Support is a service provided on the phone by a Field Engineer for limited hardware and software troubleshooting services.
10. Employee screening costs as required by the customer will be provided as follows:

Custom drug screen or background check	\$100
TWIC Card	\$250
BOISET + HUET	\$1,500

Notes: All travel time to complete the screenings will be billed at the applicable hourly rate as set forth in 1 above plus expenses. All other specialty training will be billed at cost + 20%.

11. All time to complete site specific training will be billed at the applicable hourly rate as set forth in 1 above plus expenses.
12. A Critical Power Emergency Standby Retainer provides access to a qualified ABB Field Engineer at the customer site on the same day the need is identified by the customer. All time to support the emergency service, including travel to and from the customer site, will be billed at the applicable hourly rate as set forth in 1 above, however the 1.35 multiplier applied to work with less than 24hrs notice is waived.

** The Standard and Applicable rates shown on this sheet assume that services are being performed at a location that is not subject to a Location Premium which is an additional charge/rate that may be assessed for remote, inconvenient, confined or offshore work sites. Please contact ABB to see if a Location Premium applies to your location.

Terms and Conditions for Sale of Products and Services

Form ES 104 (Rev. 4)

NOTICE: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. Definitions

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"Terms and Conditions" means these "Terms and Conditions for Sale of Products and Services", including any relevant addenda pursuant to Article 18, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

2. Payment

2.1 Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within thirty (30) days from the invoice date. If the Contract Price is less than U.S. Two Hundred Fifty Thousand Dollars (\$250,000), Seller shall issue invoices upon shipment of Products and as Services are performed. If the Contract Price is U.S. Two Hundred Fifty Thousand Dollars (\$250,000) or more, progress payments shall be invoiced starting with twenty-five percent (25%) of the Contract Price for Products and Services upon the earlier of Contract signature or issuance of Seller's order acknowledgement and continuing such that ninety percent (90%) of the Contract Price for Products is received before the earliest scheduled Product shipment and Services are invoiced as performed ("Progress Payments"). For each calendar month, or fraction thereof, that payment is late, Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

2.2 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s) and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

2.3 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving Progress Payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the schedule. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

Taxes and Duties

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("Seller Taxes"). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("Buyer Taxes"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4. Deliveries; Title Transfer; Risk of Loss; Storage

4.1 For shipments that do not involve export, including shipments from one European Union ("EU") country to another EU country, Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2010). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2010). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus up to twenty-five (25%) percent. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2 For shipments that do not involve export, title to Products shall pass to Buyer upon delivery in accordance with Section 4.1. For export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 4.1. For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item

departs from the territorial land, seas and overlying airspace of the U.S. The 1982 United Nations Convention of the law of the Sea shall apply to determine the U.S. territorial seas. For all other shipments, title to Products shall pass to Buyer the earlier of (i) the port of export immediately after Products have been cleared for export or (ii) immediately after each item departs from the territorial land, seas and overlying airspace of the sending country. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities. Notwithstanding the foregoing, Seller grants only a license, and does not pass title, for any software provided by Seller under this Contract, and title to any leased equipment remains with Seller.

4.3 Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage.

4.4 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

4.5 If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

5. Warranty

5.1 Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

5.2 The warranty for Products shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery. The warranty for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days.

5.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4 Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, re-installation and transportation of defective Products to Seller and back to Buyer.

5.5 The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear.

5.6 This Article 5 provides the exclusive remedies for all claims based on failure of or defect in Products or Services, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**

6. Confidentiality

6.1 Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

6.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

6.3 The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or

affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4 Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

7. Intellectual Property

7.1 Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "Claim") alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control defense and settlement of the Claim, and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

7.2 Section 7.1 shall not apply and Seller shall have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.

7.3 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.

7.4 Article 7 states Seller's exclusive liability for intellectual property infringement by Products and Services.

7.5 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment documentation as necessary to achieve that result.

8. Indemnity

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused by the negligence of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss or expense shall be borne by each party in proportion to its degree of negligence. For purposes of Seller's indemnity obligation, no part of the Products or Site is considered third party property.

9. Insurance

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Worker's Compensation, Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (ii) Automobile Liability insurance with a combined single limit of \$2,500,000.00; and (iii) Commercial General Liability or Public Liability insurance for bodily injury and property damage with a combined single limit of \$2,500,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

10. Excusable Events

Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

11. Termination and Suspension

11.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

11.2 If Buyer terminates the Contract pursuant to Section 11.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.

11.4 If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products.

11.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 10) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4, excluding the cancellation charge for uncompleted Products.

11.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

12. Compliance with Laws, Codes and Standards

12.1 Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.

12.2 Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in

and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

12.3 Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

13. Environmental, Health and Safety Matters

13.1 Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

13.2 Buyer shall timely advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.

13.3 If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event. Buyer shall reasonably assist in any such evacuation.

13.4 Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.

13.5 Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

13.6. Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

13.7 Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

13.8 If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.

13.9 Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work, (ii) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than Seller.

14. Changes

14.1 Each party may at any time propose changes in the schedule or scope of Products or Services. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

14.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's Site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. However, no adjustment will be made on account of a general change in Seller's manufacturing or repair facilities resulting from a change in laws or regulations applicable to such facilities. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

14.3 It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding or new part or version number compared to the part or version number listed in the Contract.

15. Limitations of Liability

15.1 The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand US dollars (US \$10,000) for all claims not part of any particular order.

15.2 Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

15.3 All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

15.4 Seller shall not be liable for advice or assistance that is not required for the work scope under this Contract.

15.5 If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (i) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 15, or (ii) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 15.

15.6 For purposes of this Article 15, the term "Seller" means Seller, its affiliates, subcontractors and suppliers of any tier, and their respective employees. The limitations in this Article 15 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and shall prevail over any conflicting terms, except to the extent that such terms further restrict Seller's liability.

16. Governing Law and Dispute Resolution

16.1 This Contract shall be governed by and construed in accordance with the laws of (i) the State of New York if Buyer's place of business is in the U.S. or (ii) England if the Buyer's place of business is outside the U.S., in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Products and the Buyer is outside the Seller's country, the United Nations Convention on Contracts for the International Sale of Goods shall apply.

16.2 All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 16. If a dispute is not resolved by negotiations, either

party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings, depending upon the location of the Buyer, in accordance with the following:

(a) if the Buyer's pertinent place of business is in the U.S, legal action shall be commenced in federal court with jurisdiction applicable to, or state court located in, either Cobb County, Georgia or the location of Buyer's principal place of business; or (b) if the Buyer's pertinent place of business is outside the U.S., the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within thirty (30) days, who shall be the Chairman. The seat, or legal place, of arbitration, shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.

16.3 Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 and/or the nuclear use restrictions set forth in Section 19.1, or to seek interim or conservatory measures. Monetary damages shall only be available in accordance with Section 16.2.

17. Inspection and Factory Tests

Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

18. Software, Leased Equipment, Remote Diagnostic Services, PCB Services

If Seller provides any software to Buyer, the Software License Addendum shall apply. If Seller leases any of Seller's equipment or provides related Services to Buyer, including placing Seller's equipment at Buyer's site to provide remote Services, the Lease Addendum shall apply. If Seller provides remote diagnostic services to Buyer, the Remote Diagnostic Services Addendum shall apply. If Seller provides PCB Services to Buyer, the PCB Services Addendum shall apply. If there is any conflict between these "Terms and Conditions for the Sale of Products and Services, Form ES 104" and the terms of any addendum incorporated pursuant to this Article 18, the terms of the addendum shall take precedence with respect to the applicable scope.

19. General Clauses

19.1 Products and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products or Services for such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Seller to any such use, if any, will be conditioned upon additional terms and conditions that Seller determines to be acceptable for protection against nuclear liability.

19.2 Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's

consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

19.3 Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.

19.4 If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

19.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 19 and 20.

19.6 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

19.7 Except as provided in Article 15 (Limitations of Liability) and in Section 19.1 (no nuclear use), this Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

19.8 This Contract may be signed in multiple counterparts that together shall constitute one agreement.

20. US Government Contracts

20.1 This Article 20 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

20.2 Buyer agrees that all Products and Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this Article 20 shall be the one in effect on the effective date of this Contract.

20.3 If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

20.4 If Buyer is procuring the Products or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

NIAGARA FALLS WATER BOARD RESOLUTION # 2019-01-010

**GRANTING THE STATE OF NEW YORK AUTHORITY
TO PERFORM AN ADJUSTMENT OF NIAGARA FALLS WATER BOARD
FACILITIES AND AGREEMENT TO MAINTAIN FACILITIES
ADJUSTED VIA THE STATE-LET CONTRACT**

WHEREAS, the New York State Department of Transportation proposes a construction, reconstruction, or improvement project named “US 62 (Niagara Falls Blvd.), (SH 65-3, 64); NY 265 (Military Road) to Packard Road,” in the City of Niagara Falls located in Niagara County, project identification number (“PIN”) PIN 5813.49; and

WHEREAS, the State will include as part of the construction, reconstruction, or improvement of the above-mentioned project adjustments to the elevation of Niagara Falls Water Board water valve boxes, storm sewer manhole covers, and sanitary manhole covers pursuant to Section 10, Subdivision 24, the State Highway Law, as shown on the contract plans relating to the project and meeting the requirements of the owner; and

WHEREAS, the service life of the relocated and/or replaced utilities has not been extended; and

WHEREAS, the State will provide for the reconstruction of the above-mentioned work, as shown on the contract plans relating to the above-mentioned project;

NOW THEREFORE BE IT

RESOLVED, that the Niagara Falls Water Board approves the proposed adjustments to the elevation of Niagara Falls Water Board water valve boxes, storm sewer manhole covers, and sanitary manhole covers and the above mentioned work to be performed on the project and shown on the contract plans relating to the project and that the Niagara Falls Water Board will maintain or cause to be maintained the adjusted facilities performed as above-stated and as shown on the contract plans; and

BE IT FURTHER RESOLVED, that the Water Board’s Director of Technical and Regulatory Services has the authority to sign, with the concurrence of the Board of Directors, any and all documentation that may become necessary as a result of this project as it relates to the Niagara Falls Water Board; and

* CONTINUED ON NEXT PAGE *

BE IT FURTHER RESOLVED, that the Secretary to the Niagara Falls Water Board is hereby directed to transmit five (5) certified copies of the foregoing resolution to the New York State Department of Transportation.

Water Board Personnel Responsible for Implementation of this Resolution:
Director of Technical and Regulatory Services

On January 14, 2019, the question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	Yes	No	Abstain	Absent
Board Member Forster	[]	[]	[]	[]
Board Member Kimble	[]	[]	[]	[]
Board Member Larkin	[]	[]	[]	[]
Board Member Leffler	[]	[]	[]	[]
Chairman O'Callaghan	[]	[]	[]	[]

Signed By:

Vote Witnessed By:

Daniel T. O'Callaghan, Chairperson

Sean W. Costello, Secretary to the Board



Department of Transportation

ANDREW M. CUOMO
Governor

PAUL A. KARAS
Acting Commissioner

FRANK P. CIRILLO, SR/WA
Regional Director

January 7, 2019

Rolfe Porter, Executive Director Utility Owner
Niagara Falls Water Board
5815 Buffalo Avenue
Niagara Falls, New York 14304

**RE: US 62 (NIAGARA FALLS BOULEVARD), (SH 65-3,64);
NY 265 (MILITARY ROAD) TO PACKARD ROAD
CITY OF NIAGARA FALLS, NIAGARA COUNTY
PIN 5813.49**

Dear Mr. Porter:

Enclosed is an electronic copy of the proposed contract plans for the above-referenced project. The City of Niagara Falls has existing facilities within highway boundary of Niagara Falls Boulevard. The City of Niagara Falls' involvement in this project consists of adjustment of water valve boxes, and manhole covers. The details of the adjustment are shown on the project plans included with this letter. The work performed by the State's contractor will be done at no cost to the City of Niagara Falls.

Also, enclosed are four (4) sets of documents which include the Utility Work Agreement (HC-140) and the Special Note. Each of the four (4) HC-140 forms must be duly executed by an authorized representative of The City of Niagara Falls.

Work being done under contract items requires a Certified Resolution by your governing body as stated in Section VI – References, of the Utility Work Agreement (HC-140). The resolution must state your municipality is *"Granting the State of New York authority to perform the adjustment for the owner"*, and *"Agreeing to maintain facilities adjusted via State-let contract"*.

The agreement requires four (4) copies of the Certified Resolution. Each copy must be signed and have a seal affixed to it. Enclosed is an example of a Certified Resolution granting the State of New York authority to perform facility adjustments, agreeing to maintain facilities, and authorizing a municipal official to enter agreements with the State of New York.

Please return four (4) original sets of the signed HC-140, Special Note, and Certified Resolution to Ronald Rolling, Regional Utilities Engineer, 100 Seneca Street, Buffalo, NY 14203 by **February 11, 2019**. One (1) copy of the fully executed agreement will be returned to you for your records.

Any questions regarding work to be done may be directed to Doug Ackerman, Design Job Manager, at (716) 847-3227 or via e-mail at Douglas.Ackerman@dot.ny.gov. Questions regarding these forms can be directed to Ronald Rolling, Regional Utilities Engineer, at (716) 847-3954 or via e-mail at Ronald.Rolling@dot.ny.gov.

Rolfe Porter, Executive Director Utility Owner
PIN 5813.49
December 18, 2018
Page 2 of 2

Sincerely,

William P. Zimmerman, P.E.
Engineering Support Unit Manager

By: Ronald W. Rolling
Ronald W. Rolling, P.E.
Regional Utilities Engineer

WPZ/RWR/EJC/htd
Attachments

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT**

Since the construction, reconstruction, or maintenance of the transportation project described below, identified as:

Project Identification No.: 5813.49	F.A. Project No.:
ROW Declaration No.:	Map Nos.:
Parcel Nos.:	County of: Niagara
Contract No.:	

Project Description: US 62 (Niagara Falls Blvd.), (SH 65-3,64); NY 265 (Military Road) to Packard Road. City of Niagara Falls, Niagara County

P.M.I. - 1.5" Milling & Resurfacing of U.S. 62, Upgrading Pedestrian Signals, ADA Curb Ramp Improvements, Sidewalk Repairs, Sign Replacements, and Drainage Repairs.

necessitates the adjustment of utility facilities as hereinafter described, the owner, **Niagara Falls Water Board**, of said facilities herewith agrees with the State of New York acting through the Commissioner of Transportation that this agreement shall apply to the accommodation of these utility facilities. Any adjustment of said facilities will be accomplished under the terms of this agreement, in accordance with the Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right-of-Way, in compliance with the attached Special Note "Coordination with the Utility Schedule, and in accordance with the contract plans, specifications, proposal, amendment(s) or change order(s).

I. Existing Facilities (describe type, size, capacity, location, etc.)

Niagara Falls Water Board has the following existing facilities and their location:

1. Existing underground water lines within highway boundary of Niagara Falls Boulevard,
2. Existing storm sewer lines within highway boundaries of the City of Niagara Falls,
3. Existing sanitary sewer lines within highway boundary of Niagara Falls Boulevard.

presently located on **N.Y. State Right-of-Way and the City of Niagara Falls** as shown on the plans for the proposed transportation project are to be adjusted as follows: (describe type, size, capacity, location, etc.)

1. Adjust elevation of water valves boxes.
2. Adjust elevation of storm sewer manhole covers.
3. Adjust elevation of the sanitary manhole covers.

per contract documents.

for an estimated \$ N/A

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT**

II. Financial Responsibility (check appropriate boxes):

- ☐ () The facilities to be adjusted under the terms of this agreement are subject to Section 52 of the State Highway Law, and the cost of this adjustment is the sole responsibility of the owner.
- ☒ X Subdivision 24 of Section 10 of the State Highway Law enables the Commissioner of Transportation to provide at the expense of the State, for adjustment to a municipally owned utility when such work is necessary as a result of State highway work. (Municipal Agreement required.)
- ☐ () Subdivision 24-b of Section 10 of the State Highway Law enables the Commissioner of Transportation to participate in the necessary expenses incurred for adjustment of privately, publicly or cooperatively owned facilities, municipal utility facilities, or facilities of a corporation organized pursuant to the State Transportation Corporations Law. (Privately Owned Property Agreement or Reimbursement Agreement required.)
- ☐ () Subdivision 27 of Section 10 of the State Highway Law enables the Commissioner of Transportation, upon the request of a municipality, to perform for and at the expense of such municipality specified work to be included within a State-let contract. (Betterment Resolution required.)
- ☐ () Subdivision 33 of Section 10 of the State Highway Law enables the Commissioner of Transportation, upon the request of a public utility corporation, to perform for and at the expense of such public utility corporation specified work to be included within a State-let contract.
- ☐ () Subdivision 13 of Section 30 of the State Highway Law enables the Commissioner of Transportation to enter into an agreement to reimburse with public funds the owner for necessary expenses incurred as a result of this adjustment, or to replace the facilities in kind.
- ☒ X The owner will develop and keep a record of costs in accordance with the New York State Department of Transportation (NYSDOT) Reimbursement Procedures, and when federal funds participate in the cost, the Federal Highway Administration (FHWA) Federal-Aid Policy Guide Part 645, or as indicated below:

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT**

III. Physical Adjustment Method (check appropriate boxes):

The actual adjustment or design engineering will be performed by the following method (s):

- ☒ Contract let by the Commissioner.
- ☐ Contract let by the Owner, (check applicable statement, i.e., a or b)
 - ☐ a. Best Interests of State.
 - ☐ b. Utility not sufficiently staffed or equipped.
- ☐ By the Owner's forces.

IV. Betterment, Salvage, and Depreciation Credits Due the Project (check appropriate boxes):

- ☒ There will be no extension of service life, improved capacity nor any other betterment of the facility (as defined by the NYSDOT Utility Reimbursement Procedures and by FHWA Federal-Aid Policy Guide Part 645) as a result of the adjustments made pursuant to this agreement.
- ☐ There is betterment described as follows:
- ☐ The owner will not claim reimbursement for that betterment portion of the work, but will duly account for it as required by applicable NYSDOT and FHWA procedures.
- ☐ The owner hereby agrees to deposit with the Comptroller of the State of New York the amount of \$_____ to cover the cost of the betterment as described above.
- ☐ The owner agrees to comply with the requirements of the NYSDOT Utility Reimbursement Procedure and FHWA Federal-Aid Policy Guide Part 645 with the respect to salvage and depreciation credits when applicable.

V. General Covenants

The owner hereby agrees to accept full title and responsibility for the adjusted facility in writing upon satisfactory completion of the work. Such acceptance will acknowledge the owner's responsibility to maintain the facility in accordance with all applicable codes, standards and regulations, including his obligation, where applicable, to remove any or all of the facility from the highway at the order of the Commissioner of Transportation, all in accordance with the Rules and Regulations Governing the Accommodation of Utilities within the State Highway Right-of-Way. All compensable claims covered by this agreement will be included in one of the following:

- A. Privately Owned Property Agreement executed prior to the performance of the work.
- B. Municipal Agreement executed prior to performance of the work.
- C. Reimbursement Agreement executed prior to performance of the work.
- D. Such other agreement as approved by NYSDOT Office of Legal Affairs.

**NEW YORK STATE DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT**

VI. References

The following documents are herewith incorporated in this agreement be reference (check appropriate boxes)

☒ Federal Highway Administration's Federal-Aid Policy Guide Part 645.

☒ Contract documents : Contract number _____
PIN: 5813.49
Plan sheets No. _____

☐ Owner's plan sheets _____

☐ Owner's estimate sheets form No. _____

☒ Resolution dated _____, by _____

☒ Granting the State of New York authority to perform the adjustment for the owner.

☒ Agreeing to maintain facilities adjusted via State-let contract.

☐ Authorizing deposit of funds by the owner.

☒ Certification by the owner or his agent that he has the legal authority to enter into this agreement.

(Print/Type Name) Owner or Agent	(Signature)	Title	Date
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Cathy Nusca, P.E., For the NYSDOT Commissioner of Transportation,		Statewide Utilities Engineer Title	Date
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SPECIAL NOTE**COORDINATION WITH THE UTILITY SCHEDULE**

The contractor must coordinate their schedule of operations with the various utility owners involved with the project and shall verify utility information found in the contract documents. Utility revisions required by the various utility owners in connection with this project include:

Niagara Falls Water Board**Utility Field Contact:**

Rolfe Porter, Executive Director
5815 Buffalo Avenue
Niagara Falls, New York 14304
(716) 283-9770 Ext. 232
rporter@nfwb.org

Niagara Falls Water Board has the following existing facilities and their location:

1. Existing underground water lines within highway boundary of Niagara Falls,
2. Existing storm sewer lines within highway boundaries of the City of Niagara Falls,
3. Existing sanitary sewer lines within highway boundary of Niagara Falls Boulevard.

Reimbursable work to be done by the State's contractor:

The project requires the following work to be done per contract documents:

1. Adjust elevation of water valves boxes.
2. Adjust elevation of storm sewer manhole covers.
3. Adjust elevation of the sanitary manhole covers.

The work is to be done by the State's contractor and paid by contract items.

The State's contractor must give two (2) full working days notice to utility owner before commencing work on their facilities.

The State's Engineer-In-Charge will provide record plans to Niagara Falls Water Board.

The contractor should be aware that overhead and underground lines may be in close proximity to the work site. The New York State Department of Transportation (NYSDOT) has reviewed the site and has determined that the site can be constructed without relocating utility facilities other than those that have already been identified as needing adjustment.

The utility relocation time frame(s), as stated above, have been mutually established by NYSDOT and the utility companies based upon the recommended sequence of construction. Alterations to the recommended sequence of construction may affect the time schedules for relocating utility facilities. The contractor should expect that additional time may be required for planning and material procurement.

In addition to the above-itemized revisions, other relocations may become necessary during the construction phase as a result of more precise location data or other changes that might develop.

PIN 5813.49

These relocations are to be performed by the utility owners and/or the State contractor with coordination by the State Engineer-In-Charge and the contractor.

Suitable time frames for these additions shall be coordinated between the contractor and the utility companies. Such time frames are not to be included within previously established time frames.

The contractor is reminded that he is governed by and must adhere to the provisions of 16 NYCRR Part 753 (Protection of Underground Facilities).