

**ST. LAWRENCE-FDR POWER PROJECT,
FERC PROJECT NO. 2000**

**COMPREHENSIVE RELICENSING
SETTLEMENT ACCORD**

Including

**APPENDIX A
PROPOSED LICENSE ARTICLES**

January __, 2003

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COMPREHENSIVE RELICENSING SETTLEMENT ACCORD

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This Comprehensive Relicensing Settlement Accord (“Settlement Accord”) for the relicensing and New License term of the St. Lawrence-FDR Power Project is made on this _____ day of _____, 2003, by and between the following entities (referred to individually as a “Party” and collectively as “Parties”):

Power Authority of the State of New York, (“Authority”), Licensee for the Project;
United States Fish and Wildlife Service (“Service”);
New York State Department of Environmental Conservation (“DEC”);
New York State Department of State (“DOS”);
New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”);
St. Lawrence Aquarium and Ecological Center Inc. (“SLAEC”);
New York Rivers United (“NYRU”); and
Local Government Task Force, an association comprised of the following member entities: St. Lawrence County, New York; Town of Louisville, New York; Town of Lisbon, New York; Town of Massena, New York; Town of Waddington, New York; Village of Massena, New York; Village of Waddington, New York; Lisbon Central School District; Madrid-Waddington Central School District; and Massena Central School District

WITNESSETH:

WHEREAS, the Authority owns and operates the St. Lawrence-FDR Power Project, FERC Project No. 2000 (“Project”) located on the St. Lawrence River, in St. Lawrence County, New York;

WHEREAS, the 50-year license for the Project, issued by the Federal Power Commission on July 15, 1953, expires on October 31, 2003;

WHEREAS, the Authority filed an Application for New License with the Federal Energy Regulatory Commission (“Commission” or “FERC”) for a new 50-year license for the Project on October 31, 2001, and filed a water quality certificate with DEC pursuant to Section 401 of the Clean Water Act (“CWA”) on October 15, 2002;

WHEREAS, the Parties have negotiated and executed this Settlement Accord in anticipation of FERC’s issuance of a New License for the Project to the Authority; and

WHEREAS, the Parties agree that the resolution of all issues among the Parties related to the relicensing of the Project are addressed in the Proposed License Articles for the Authority’s New License for the Project, the terms of this Settlement Accord, and the Individual Agreements between several of the Parties that are attached to this Settlement Accord;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 GENERAL PROVISIONS

1.1 DEFINITIONS

“**Commission**” or “**FERC**” shall mean the Federal Energy Regulatory Commission.

“**Ecological Agreement**” shall mean the Ecological Mitigation and Enhancement Measures Settlement Agreement entered into by the Authority, the Service, DEC, and NYRU, and included in this Settlement Accord at Attachment 2.

“**FEMRF Agreement**” shall mean the Fish Enhancement, Mitigation, and Research Fund Settlement Agreement between the Authority and the Service, and included in this Settlement Accord at Attachment 1.

“**Individual Agreements**” shall mean the Ecological Agreement, the FEMRF Agreement, the OPRHP Agreement, the SLAEC Agreement, and the Task Force Agreement.

“**License**” shall mean the regulatory authorization for construction, maintenance, and operation of a hydroelectric project subject to the jurisdiction of FERC pursuant to the Federal Power Act, 16 U.S.C. §§ 791 *et seq.* (“FPA”).

“**Licensee**” shall mean the Authority, the legal entity to which the Commission issues the New License for the Project.

“**License Provision**” shall mean any condition, prescription, requirement, holding, reservation of authority, or article included into the New License for the St. Lawrence-FDR Power Project by the Commission, or any condition, term, reservation or other License requirement adopted or otherwise included into the New License for the Project, including but not limited, to a water quality certificate issued by DEC pursuant to Section 401 of the CWA.

“**New License**” shall mean the new License, not to include any annual License, issued by the Commission to the Authority pursuant to Section 15 of the FPA for the continued operation of the Project, which shall take effect upon the Authority’s acceptance following expiration of the Project’s current original License.

“**Offer of Settlement**” shall mean an offer of settlement to be filed with FERC pursuant to 18 C.F.R. § 385.602, which offer shall include this Settlement Accord, which includes Proposed License Articles, the five attached Individual Agreements, and the attached letter from the National Marine Fisheries Service to the Authority. Together, these documents form the settlement proposal for the Project relicensing proceeding submitted on behalf of the Authority and all signatories to the Offer of Settlement.

“**OPRHP Agreement**” shall mean the settlement agreement between the Authority and OPRHP, and included in this Settlement Accord at Attachment 5.

“Party” or “Parties” shall, in context, mean the signatories to this Settlement Accord, which are as follows: the Power Authority of the State of New York; United States Fish and Wildlife Service; New York State Department of Environmental Conservation; New York State Department of State; New York State Office of Parks, Recreation and Historic Preservation; St. Lawrence Aquarium and Ecological Center Inc.; New York Rivers United; and the Local Government Task Force, an association comprised of Lisbon School District; Madrid-Waddington School District; Massena Central School District; St. Lawrence County, New York; Town of Louisville, New York; Town of Lisbon, New York; Town of Massena, New York; Town of Waddington, New York; Village of Massena, New York; and Village of Waddington, New York.

“Project” shall mean the St. Lawrence-FDR Power Project, licensed to the Authority as FERC Project No. 2000.

“Project Boundary” shall mean the external limits of the Project, which encloses all Project lands, waters, works and other features that are subject to FERC jurisdiction.

“Proposed License Article” shall mean the terms and conditions set forth in Appendix A of this Settlement Accord that the Commission should include, without modification, in the New License issued to the Authority for the continued operation of the Project.

“Settlement Accord” shall mean the entirety of this Comprehensive Relicensing Settlement Accord, including the Proposed License Articles at Appendix A, the five attached Individual Agreements, and the attached letter from the National Marine Fisheries Service to the Authority.

“SLAEC Agreement” shall mean the relicensing settlement agreement between the Authority and St. Lawrence Aquarium and Ecological Center Inc., and included in this Settlement Accord at Attachment 4.

“Task Force Agreement” shall mean the relicensing settlement agreement between the Authority and the Local Government Task Force, and included in this Settlement Accord at Attachment 3.

1.2 SCOPE OF SETTLEMENT ACCORD

The Parties agree that this Settlement Accord, including the Proposed License Articles and Individual Agreements, resolves among the Parties all their issues associated with, and constitutes a comprehensive settlement of, the proceeding in FERC Docket No. P-2000-036, relating to issuance of a New License for the Project. Pursuant to the Parties’ obligations under Sections 4, 10(a), 10(j), and 18 of the FPA, this Settlement Accord establishes the Authority’s obligations for the protection, mitigation and enhancement of ecological, environmental, cultural, and recreational resources affected by the Project under a New License issued by FERC. Pursuant to this Settlement Accord, all Parties support the Authority’s entire proposal set forth in its Application for New License for

the Project, filed with the Commission on October 31, 2001, as supplemented and revised by the terms of this Settlement Accord, including the Commission's issuance of a 50-year New License for the Project.

1.3 POWERS RESERVED

1.3.1 Clean Water Act Section 401 Water Quality Certification

As required by Section 401 of the CWA, FERC may not issue a New License for the Project unless and until a certification of compliance with water quality standards has been made or waived by the State agency responsible for CWA implementation. DEC is the entity in the State of New York that is statutorily authorized and obligated to issue water quality certifications under Section 401 of the CWA. On October 15, 2002, the Authority submitted an application for water quality certification to DEC. As of the date of this Settlement Accord, DEC has not issued the requisite certification. While DEC specifically reserves the authority herein to issue a water quality certification, it agrees not to include in any certification for the Project conditions other than ones consistent with the terms of this Settlement Accord. Although reserving its right, consistent with Federal and State law, to place conditions in any water quality certification it may issue for the Project in the future, DEC's signature on this Settlement Accord indicates that the provisions contained in this Settlement Accord satisfy the water quality standards applicable under New York law.

1.3.2 Coastal Zone Management Act Consistency Certification

As required under the Coastal Zone Management Act ("CZMA") and Article 42 of the New York Executive Law, Rules and Regulations Title 19, Part 600, the relicensing of the Project is subject to a Consistency Certification decision from DOS. In compliance with these requirements, the Authority, in its Application for New License, certified pursuant to 15 C.F.R. § 930.57(b) that "the proposed activity complies with the enforceable policies of the New York approved management program and will be conducted in a manner consistent with such program." The Authority also submitted a Coastal Policies Consistency Statement and Federal Consistency Assessment Form to DOS Division of Coastal Resources on October 31, 2001. As of the date of this Settlement Accord, DOS has not issued a Consistency Certification decision, and the Parties acknowledge that DOS may not formally bind itself to take any particular certification action on any pending or future application, except through the procedures for determining consistency set forth at 15 C.F.R. Part 930 and 19 NYCRR Part 600. Therefore, DOS expressly reserves the right, consistent with Federal and State law, to issue a Consistency Certification as it may deem necessary in any pending application. DOS's signature on this Settlement Accord does, however, indicate that absent a material change in applicable law or the collection or discovery of new information by DOS through the public process, environmental review, or other further actions contemplated under this Settlement Accord, DOS agrees that the provisions contained in this Settlement Accord are adequate to meet the requirements of a Consistency Certification.

1.4 COMPLIANCE WITH STATUTES AND REGULATIONS

Each Party represents that this Settlement Accord is consistent with and fully satisfies any and all of its applicable statutory and regulatory rights and responsibilities under Federal and State law pertaining to the relicensing of the Project, including without limitation the National Environmental Policy Act (“NEPA”), the CWA, the Endangered Species Act, the CZMA, the National Historic Preservation Act, the Fish and Wildlife Coordination Act, and the FPA. Except as provided in Section 1.3, each Party represents that this Settlement Accord is consistent with any statutory and regulatory authority or obligation the Party may have under any applicable State or Federal laws and regulations.

Section 1.4 shall not be read to predetermine the outcome of the NEPA analysis or any obligation that a Party may have under applicable State or Federal law or regulation that is reserved in Section 1.3. If the NEPA analysis leads to the addition of any objectionable License Provision, as set forth in Section 4.2, the Parties recognize that such objectionable License Provision may trigger the rights of the Parties under Section 5 of this Settlement Accord.

1.5 LIMITATION OF APPLICABILITY

This Settlement Accord is made on the express understanding that it constitutes a negotiated settlement of issues specific to the Project. No Party shall be deemed, by virtue of execution of this Settlement Accord, to have established precedent, or admitted or consented to any approach, methodology, or principle except as expressly provided herein. In the event this Settlement Accord is approved by FERC, such approval shall not be deemed precedential or controlling regarding any particular issue or contention in any other proceeding.

1.6 EFFECTIVE DATE AND TERM OF SETTLEMENT ACCORD

This Settlement Accord shall become effective upon execution of all Parties. Except as provided in Section 5, this Settlement Accord shall remain in effect for the term of the New License issued by the Commission for the Project and for any annual License issued subsequent thereto. This Settlement Accord shall be binding on and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement Accord, including the Individual Agreements.

1.7 EFFECTIVE DATE OF POWER AUTHORITY OBLIGATIONS

Unless otherwise expressly provided in this Settlement Accord, including the Individual Agreements, the obligations of the Authority shall become effective upon acceptance by the Authority of a New License for the Project. Unless expressly provided for herein or in any of the Individual Agreements, however, the Authority’s obligations with respect to any issue on which rehearing is sought from FERC shall not become effective until the date on which resolution of that issue becomes final following FERC or judicial action.

1.8 OFFER OF SETTLEMENT

The Parties agree that within 30 days of the effective date of this Settlement Accord, the Authority shall file this Settlement Accord as an Offer of Settlement with FERC pursuant to Rule 602 of the Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2002).

1.9 ENFORCEABILITY

It is the intent of the Parties that the Proposed License Articles set forth in Appendix A to this Settlement Accord shall be enforced by FERC and other regulatory agencies that have concurrent jurisdiction to enforce such articles, as set forth in Section 7.1. The Offer of Settlement shall request FERC to incorporate all Proposed License Articles, without modification, into the New License for the Project and to identify all Proposed License Articles, if any, that are unenforceable by FERC. The Parties agree that if FERC does not expressly identify a Proposed License Article as unenforceable, they will proceed as though such provision is enforceable by FERC. All terms of this Settlement Accord, including the terms of the Individual Agreements, that are outside FERC's jurisdiction shall not be incorporated into the New License for the Project and shall be enforced through remedies available under applicable State or Federal law, as set forth in Section 7.2.

2 SETTLEMENT COMMITMENTS

2.1 PROPOSED LICENSE ARTICLES

The Parties agree that the obligations set forth in this Settlement Accord that are enforceable by the Commission are set forth in Appendix A to this Settlement Accord as Proposed License Articles. These Proposed License Articles satisfy the respective Federal and State requirements of the Parties within the jurisdiction of the Commission for the relicensing and continued operation of the Project with respect to the protection, mitigation and enhancement of environmental and ecological resources affected by the Project (including, but not limited to, fisheries, wildlife and other ecological resources), water quality, recreation, and cultural and historic resources, except as provided in Sections 1.3 and 2.2.2 of this Settlement Accord.

2.2 OBLIGATIONS OF FEDERAL AND STATE AGENCIES

2.2.1 Exercise of Regulatory Authority

Except as provided in Section 1.3 of this Settlement Accord, the Service, DEC, DOS, and OPRHP shall not, throughout the duration of the New License term for the Project, exercise any statutory and regulatory authorities under applicable Federal or State law in a manner that is inconsistent with the terms of this Settlement Accord. The Service, DEC, DOS, and OPRHP agree not to impose any additional obligations on the Authority, except for the provisions in this Settlement Accord, and agree further not to propose,

advocate, or adopt any License Provision that is in any way contrary to or inconsistent with this Settlement Accord.

2.2.2 Submittal of Recommendations, Conditions, and/or Prescriptions

Except as provided in Section 1.3 of this Settlement Accord, the Service, DEC, DOS, and OPRHP agree that this Settlement Accord shall constitute the agencies' complete recommendations, conditions, and/or prescriptions pursuant to Sections 10(a) and 10(j) of the FPA, as provided in 18 C.F.R. § 4.34(b) (2002). The Service specifically reserves its right to submit to FERC a reservation of its authority under Section 18 of the FPA in the form set forth in Appendix A of this Settlement Accord.

This Settlement Accord does not affect the ability of the Bureau of Indian Affairs ("BIA") to file with FERC additional study requests, recommendations, terms and/or conditions or to otherwise participate in the relicensing of the Project pursuant to BIA's applicable statutory authorities, nor does this Settlement Accord constrain the ability of the Authority or other Parties to oppose any such filing or participation.

2.3 OBLIGATIONS OF ALL PARTIES

By entering into this Settlement Accord, all Parties agree to:

- (1) Submit, within 20 days after the Authority files the Offer of Settlement pursuant to Section 1.8 of this Settlement Accord, a statement, either individually or collectively, in support of the Offer of Settlement;
- (2) Ensure that, throughout the term of this Settlement Accord, any and all of the Parties' filings or other submittals with FERC, DEC, or any other administrative entity or court are not inconsistent with this Settlement Accord, and do not propose, advocate, impose, or adopt any License Provision that is in any way contrary to or inconsistent with this Settlement Accord, including the Proposed License Articles and all Individual Agreements;
- (3) Actively support, in all relevant regulatory proceedings, the incorporation of the Proposed License Articles into the New License issued by FERC and incorporation of consistent terms into the water quality certification and other applicable permits and authorizations, as appropriate.

3 LICENSE TERM

Because the Authority has engaged in a collaborative relicensing process, and because of the substantial investment the Authority is making for the New License period, the Parties agree that the term of the New License should be fifty (50) years.

4 ADOPTION BY FERC

4.1 ADOPTION WITHOUT MODIFICATION

The Parties have entered into this Settlement Accord with the express expectation and condition that FERC approves the Settlement Accord as an Offer of Settlement and issues a 50-year New License for the Project, that incorporates, without modification, the Proposed License Articles in Appendix A. In addition, the Authority has entered into this Settlement Accord with the express expectation and condition that: (1) DEC will issue a water quality certification under Section 401 of the CWA that is consistent with the terms of this Settlement Accord; (2) DOS will issue a Consistency Certification pursuant to the CZMA that is consistent with the terms of this Settlement Accord; and (3) the National Marine Fisheries Service (“NMFS”) will assent to the Service’s exercise of its authority under Section 18 of the FPA and will not seek to independently exercise authority under Section 18 of the FPA.

The Parties agree that if FERC approves the Offer of Settlement and incorporates the Proposed License Articles into the New License without modification, they will not seek rehearing of the FERC order granting a New License for any and all issues covered by this Settlement Accord, or support in any way any such request for rehearing by any non-Party to this Settlement Accord; provided, however, that as to DEC, this obligation applies only if FERC also incorporates into the New License all conditions contained in its CWA Section 401 water quality certification; provided further, that with the exception of the Service, nothing herein shall be read to bind the Office of the Solicitor of the Department of the Interior to seek rehearing on behalf of any of its other agencies or bureaus.

The Authority reserves the right, even if FERC approves the Offer of Settlement and incorporates the Proposed License Articles into the New License without modification, to seek rehearing with FERC: (1) for any and all issues not covered by this Settlement Accord; (2) if the water quality certification issued by DEC pursuant to Section 401 of the CWA or Consistency Certification issued by DOS pursuant to the CZMA are inconsistent with the terms of this Settlement Accord; or (3) if NMFS seeks to exercise its authority under FPA Section 18.

4.2 FERC REJECTION OR ADOPTION WITH MODIFICATION

In the event that: (A) FERC issues any licensing order or DEC, subsequent to issuance of the New License, issues any water quality certification or amendment; and (B) any such order, certification or amendment contains a License Provision that:

- (1) Alters or prevents implementation of any Proposed License Article or the proposed License term as set forth in Section 3;
- (2) Holds that any Proposed License Article is not within FERC’s jurisdiction to enforce;

- (3) Results in a material inconsistency between any part of the New License for the Project and this Settlement Accord;
- (4) Requires the addition of any material terms to the Proposed License Articles; or
- (5) Otherwise changes, conditions, modifies or omits, either directly or indirectly, any of the Proposed License Articles in Appendix A, or materially changes or modifies any plans required to be submitted in accordance with such articles, in its order issuing a New License for the Project or any subsequent order thereto,

then this Settlement Accord and the Individual Agreement(s) affected by such action shall be considered amended to conform to the FERC order or the DEC water quality certificate, unless any Party whose interests are materially and directly aggrieved by such License Provision withdraws from this Settlement Accord, pursuant to Section 5, which may result in rendering this Settlement Accord null and void, pursuant to Section 5.2.

5 WITHDRAWAL FROM SETTLEMENT ACCORD

5.1 PROCESS FOR WITHDRAWAL

Should any License Provision materially and directly aggrieve the interests of any Party, as set forth in Section 4.2 of this Settlement Accord, the Parties agree to adhere to the following process for amending or withdrawing from this Settlement Accord.

5.1.1 Notification

Within ten (10) days of issuance of an order containing the objectionable License Provision(s), the Party whose interests are directly and materially aggrieved by such License Provision(s) shall provide written notification, pursuant to the requirements of Section 11.1 of this Settlement Accord, to all other Parties of its intent to withdraw from the Settlement Accord.

5.1.2 Administrative Appeals

Following notification as set forth in Section 5.1.1, all Parties shall file a joint request for rehearing with the Commission and/or pursue all appropriate administrative appeals with DEC, requesting the agency responsible for the objectionable License Provision(s) to amend such License Provision(s) to conform with this Settlement Accord.

5.1.3 Good-Faith Negotiation

Following the submittal of administrative appeal(s) as set forth in Section 5.1.2, the Parties agree that the aggrieved Party shall engage the other Parties in good-faith negotiations in an attempt to amend this Settlement Accord by making it conform with the objectionable License Provision(s). The Parties agree to a 120-day period to conduct

good-faith negotiations under this Section, with a minimum of three meetings to be held during a 90-day period.

If the Commission or DEC, during the pendency of the good-faith negotiations, issues an order that alleviates the aggrieved Party's concerns, the Parties shall discontinue the negotiation process. If, however, the Commission or DEC, during the pendency of the good-faith negotiations, issues an order that denies the Parties' joint administrative appeal or does not reverse the objectionable License Provision(s), the Parties shall continue the negotiations under this Section, but the aggrieved Party may pursue judicial review, pursuant to Section 5.1.4 of this Settlement Accord.

If the good-faith negotiations result in an agreement among all Parties to amend this Settlement Accord to conform it to the objectionable License Provision(s), the Parties shall withdraw the joint administrative appeal(s) filed pursuant to Section 5.1.2 or petition for review filed pursuant to Section 5.1.4, and this Settlement Accord shall be deemed modified to conform to said order.

5.1.4 Judicial Review

If, as a result of the administrative appeal(s) filed pursuant to Section 5.1.2 of this Settlement Accord, the Commission or DEC issues a final order denying the merits of the joint appeal by not reversing the objectionable License Provision(s), the aggrieved Party may file a petition for review by the appropriate reviewing court. Other Parties may intervene in the proceeding, but shall not take a position adverse to the terms of this Settlement Accord.

5.1.5 Withdrawal

The Party whose interests are materially and directly aggrieved by any License Provision, as set forth in Section 4.2 of this Settlement Accord, may withdraw from this Settlement Accord, but only after: (1) the Parties comply with Sections 5.1.1 through 5.1.4 of this Settlement Accord; and (2) the aggrieved Party exhausts all available avenues for review of the order(s) imposing the objectionable License Provision(s) by filing timely requests for rehearing, petitions for review, and other required filings to continue the review process. Following the final, non-appealable order or opinion that fails to remedy the objectionable License Provision(s), the aggrieved Party may provide written notification to the other Parties of its withdrawal from this Settlement Accord, pursuant to the notification requirements of Section 11.1. Upon notification, the provisions of Section 5.2 of this Settlement Accord shall apply.

If the aggrieved Party fails to comply with Sections 5.1.1 through 5.1.4 of this Settlement Accord or exhaust all available avenues for review of the order(s) imposing the objectionable License Provision(s), then the Party may not withdraw from this Settlement Accord, and, upon expiration of the time period to continue the review process, this Settlement Accord shall be deemed amended with the final order of the Commission, DEC, or court.

5.2 EFFECT OF WITHDRAWAL

5.2.1 Withdrawal by the Authority

Withdrawal by the Authority, pursuant to Section 5.1 of this Settlement Accord, shall render this Settlement Accord null and void, and the Parties shall not have any rights or obligations under this Settlement Accord, nor shall any Party receive any benefits under this Settlement Accord. Notwithstanding this Settlement Accord being rendered null and void, the Parties shall continue to be bound by Section 6 of this Settlement Accord. If this Settlement Accord is rendered null and void, the Parties agree that the Commission cannot consider this Settlement Accord, including the Individual Agreements and Proposed License Articles, as part of the record of the relicensing proceeding when issuing a New License for the Project.

5.2.2 Withdrawal by a Party Other Than the Authority

Withdrawal by any Party other than the Authority, pursuant to Section 5.1 of this Settlement Accord, shall not render this Settlement Accord null and void and shall not affect the enforceability of this Settlement Accord. Withdrawal by any Party other than the Authority, however, shall: (1) render null and void the Individual Agreement(s) that are implicated by the objectionable License Provision(s), if the Party's withdrawal results in the Authority as the only Party to any of the Individual Agreement(s); and (2) amend this Settlement Accord to omit the terms of said null and void Individual Agreement(s). The withdrawing Party shall have no rights and receive no benefits under this Settlement Accord, the Offer of Settlement, or any Individual Agreement. The withdrawing Party shall, however, continue to be bound by Section 6 of this Settlement Accord.

If a Party other than the Authority withdraws from this Settlement Accord pursuant to Section 5.1, the Authority may at its option choose to let the Settlement Accord stand, thereby obligating the Authority and the Parties to continue to be bound by the terms of this Settlement Accord, or to itself withdraw from this Settlement Accord. If the Authority invokes its option to withdraw in response to a withdrawal by another Party, the provisions of Section 5.2.1 shall apply.

6 SETTLEMENT NEGOTIATIONS PRIVILEGED

The Parties have entered into the negotiations and discussions leading to this Settlement Accord with the understanding that to the fullest extent allowed by law, all discussions relating to this Settlement Accord, including the Proposed License Articles and Individual Agreements, are privileged and confidential. This material shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and are not to be used by any entity in any manner, including admission into evidence, in connection with these or any other proceedings related to the subject matter of this Settlement Accord. In the event that this Settlement Accord is rendered null and void pursuant to Section 5.2, the Settlement Accord, and all drafts, work papers, and notes

related to its development, to the fullest extent allowed by law, shall be deemed settlement materials and shall not constitute a part of the record in any proceeding, nor be admissible into evidence in any proceeding related to the subject matter of this Settlement Accord.

7 RESOLVING DISPUTES AMONG THE PARTIES

7.1 DISPUTE RESOLUTION FOR LICENSE PROVISIONS

Except as provided in any of the Individual Agreements, the Parties agree to utilize the following alternative dispute resolution mechanism to resolve all disputes related to the compliance with, or the performance of, obligations set forth in this Settlement Accord and incorporated into the FERC-issued New License:

7.1.1 Notice of Dispute

Any Party who believes that a dispute has arisen shall provide written notice pursuant to Section 11.1 to the other Parties specifying the Parties with whom the dispute exists and describing the matter(s) in dispute, including the relief or resolution to address the dispute. Each Party who wishes to participate in the resolution of the dispute (“Participating Parties”) shall provide, within 15 days of receipt of such notice, written notification to the other Parties pursuant to Section 11.1 of its intention to do so.

7.1.2 Consultation

The Participating Parties shall commence a 120-day Consultation period (measured from the date of the notice of the dispute) to engage in good faith negotiations to resolve the dispute(s). During the Consultation period, the Participating Parties shall hold at least three meetings. At any time during this 120-day Consultation period, the Participating Parties may, by mutual consent, initiate Facilitated Mediation through the FERC Office of Dispute Resolution Services (“DRS”) as set forth in Section 7.1.3.

7.1.3 Facilitated Mediation at FERC Office of Dispute Resolution Services

If disagreement persists at the conclusion of the Consultation period, or if the Participating Parties mutually consent during the Consultation period, an aggrieved Participating Party may, within 15 days after the conclusion of the consultation period, initiate Facilitated Mediation through DRS. The mediation process shall continue until the dispute is settled or until the mediator makes a finding that there is no possibility of settlement through Facilitated Mediation. At any time during Facilitated Mediation at DRS, the Participating Parties may, by mutual consent, initiate proceedings before FERC as set forth in Section 7.1.4.

7.1.4 FERC Proceedings

If disagreement persists at the conclusion of the Facilitated Mediation at FERC Office of DRS, or if the Participating Parties mutually consent during Facilitated Mediation, an aggrieved Participating Party may, within 15 days after the conclusion of Facilitated Mediation through DRS, initiate proceedings before FERC as set forth in its Rules of Practice and Procedure.

7.2 DISPUTE RESOLUTION PROCESS FOR NON-LICENSE PROVISIONS

Except as provided in any of the Individual Agreements, the Parties agree to utilize the following alternative dispute resolution mechanism to resolve all disputes related to the compliance with, or the performance of, obligations set forth in this Settlement Accord and not incorporated into the FERC-issued New License:

7.2.1 Notice

Any Party who believes that a dispute has arisen shall provide written notification pursuant to Section 11.1 to the other Parties specifying the Parties with whom the dispute exists and describing the matter(s) in dispute and the circumstances under which it arises. Each Party who wishes to participate in the resolution of the dispute (“Participating Parties”) shall provide, within 15 days of receipt of such notice, written notification to the other Parties pursuant to Section 11.1 of its intention to do so.

7.2.2 Consultation

The Participating Parties shall commence a 120-day Consultation period (measured from the date of the notice of the dispute) to engage in good faith negotiations to resolve the dispute(s). During the Consultation period, the Participating Parties shall hold at least three meetings. At any time during the Consultation period, the Participating Parties may, by mutual consent, initiate Facilitated Mediation as set forth in Section 7.2.3.

7.2.3 Facilitated Mediation

If disagreement persists at the conclusion of the Consultation period, or if the Participating Parties mutually consent during the Consultation period, an aggrieved Party may, within 15 days after the conclusion of Consultation, initiate Facilitated Mediation through the American Arbitration Association. The mediation process shall continue until the dispute is settled or until the mediator makes a finding that there is no possibility of settlement through Facilitated Mediation. At any time during Facilitated Mediation, the Participating Parties may, by mutual consent, initiate Court Proceedings as set forth in Paragraph 7.2.4.

7.2.4 Court Proceedings

If disagreement persists at the conclusion of the Facilitated Mediation, or if the Participating Parties mutually consent during Facilitated Mediation, an aggrieved Participating Party may, within 15 days after the conclusion of Facilitated Mediation,

commence Court Proceedings in a court located in Albany County, New York, as set forth in Section 10 of this Settlement Accord. The final disposition of the Court Proceedings shall be binding upon all Parties to this Settlement Accord.

8 ***FORCE MAJEURE***

An event of *Force Majeure* as used herein means any event beyond the reasonable control of and which occurs without the fault or negligence of the Authority or any entity controlled by the Authority, including its contractors and subcontractors (to the extent said contractor was acting under the control or direction of the Authority), which events may include but are not limited to: any delay or failure to grant a permit or other regulatory authorization required by law to be granted by any Federal, State, or local government authority, or any regulation, law, or prohibitory or mandatory action of any Federal or State governmental authority; acts of God or sudden actions of the elements, including fire; drought or critically high or low flows and levels in the St. Lawrence River watershed; strikes, lockouts or other similar such industrial disturbances; acts of the public enemy, wars, civil disturbances, blockades, military actions, insurrections or riots; landslides, floods, washouts, lightning, earthquakes, tornadoes, hurricanes, blizzards or other storms or storm warnings; explosions, fires, sabotage or vandalism; breakage, defects, malfunctioning, or accident to machinery, equipment, materials or lines of pipe or wires, freezing of machinery, equipment, materials or lines of pipe or wires; inability or delay in the obtaining of materials or equipment; inability to obtain or utilize any permit, approval, easement, license or right-of-way. The settlement of strikes, lockouts or other similar such industrial disturbances shall be entirely within the discretion of the Authority. The requirement herein that any event of *Force Majeure* shall be remedied with all reasonable dispatch shall not require the settlement of strikes, lockouts or other similar such industrial disturbances when such course is, in the opinion of the Authority, inadvisable.

If any event of *Force Majeure* directly renders the Authority unable, wholly or in part, to perform any obligations under this Settlement Accord, it is agreed that, upon giving notice and full particulars of such event of *Force Majeure* to other Parties, as soon thereafter as practicable, the Authority is authorized to suspend performance under such obligations during the continuance of any inability or incapacity so caused, but for no longer period; provided, however, the Authority shall not be relieved from: (1) any obligations of this Settlement Accord not directly affected by the event of *Force Majeure*; or (2) any obligation to make payment to another Party for pre-existing obligations by that Party. The Authority shall use best efforts to remedy the cause of such inability or incapacity with all reasonable dispatch, including, but not limited to, the prompt commencement and prosecution of litigation. When the Authority is able to resume performance of its obligations, it shall give the other Parties notice to that effect. The occurrence of a *Force Majeure* that results in impossibility of performance of an obligation, however, shall excuse the Authority's performance.

9 **TITLES**

To the extent that there is any inconsistency between the title of a section of this Settlement Accord and the text of the section, the text shall govern.

10 CHOICE OF LAW

Generally, the provisions of this Settlement Accord shall be incorporated into the New License and shall be enforceable through proceedings before FERC. With regard to any and all other matters, this Settlement Accord, as a binding contract between the Parties, shall be governed by and construed under New York law without reference to its conflicts of law principles. Any action at law, suit in equity, or other judicial proceedings for the enforcement of this Settlement Accord or any of its provisions must be brought in and maintained only in a court located in Albany County, New York; provided, however, that any action against NYRU shall only be for injunctive relief.

11 NOTICE AND COMMUNICATION

11.1 NOTIFICATION REQUIREMENTS

All written notices to be provided pursuant to this Settlement Accord shall be mailed by U.S. certified mail, or overnight express service, postage prepaid, to each Party at the addresses listed below in Section 11.2 or subsequent address as a Party shall identify. Notices shall be deemed to be given five (5) business days after the date of mailing or on date of receipt if overnight express or other receipt-notification service is used.

11.2 NOTIFICATION CONTACT INFORMATION

For purposes of implementing this Settlement Accord, the Parties agree that the following individuals shall be designated the primary contact persons and all written notices shall be posted to these individuals at the addresses listed below. Notification of changes in the contact persons must be made in accordance with Section 11.1 to all other contact persons:

For the Authority:

John J. Suloway, Director
Power Authority of the State of New York
Mail Stop Code 14-L
123 Main Street
Telephone: (914) 287-3971
Facsimile: (914) 681-6613
E-mail: john.suloway@nypa.gov

For the Service:

David A. Stilwell, Field Supervisor
U.S. Fish and Wildlife Service

New York Field Office
3817 Luker Rd.
Cortland, NY 13045
Telephone: (607) 753-9334
Facsimile: (607) 753-9699
E-mail: David_Stilwell@fws.gov

For DEC:

Brian Fenlon, Regional Permit Administrator
New York State Department of Environmental Conservation
State Office Building
317 Washington Street
Watertown, NY 13601-3787
Telephone: (315) 785-2246
Facsimile: (315) 785-2242
E-mail: bdfenlon@gw.dec.state.ny.us

For DOS:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For OPRHP:

Daniel Kane, Director, Resource Management
New York State Office of Parks, Recreation and Historic Preservation
Agency Building 1, 17th Floor
Empire State Plaza
Albany, NY 12238
Telephone: (518) 473-7944
Facsimile: (518) 474-0713
E-mail: Daniel.Kane@oprhp.state.ny.us

For SLAEC:

Julia Rose, Executive Director
St. Lawrence Aquarium & Ecological Center, Inc.
Suite 103
St. Lawrence Center Mall
Massena, NY 13662
Telephone: (315) 769-0787
Facsimile: (315) 769-0258

Email: rose@slaec.org

For NYRU:

Bruce Carpenter, Executive Director
New York Rivers United
P.O. Box 1460
Rome, NY 13442-1460
Telephone: (315) 339-2097
Facsimile: (315) 339-6028
Email: Bruce_Carpenter@newyorkriversunited.org

For St. Lawrence County, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Town of Louisville, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Town of Lisbon, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Town of Massena, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Town of Waddington, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Village of Massena, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Village of Waddington, New York:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Lisbon Central School District:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Madrid-Waddington Central School District:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

For Massena Central School District:

[Name, Title]
[Address]
[Phone]
[Fax]
[E-mail]

11.3 OTHER COMMUNICATIONS

Notices and other communications not required to be made to all Parties or not required to be made in a specific manner under the terms of this Settlement Accord need not be in writing and may be made by telephone, electronic mail, or facsimile.

12 COSTS

Except as provided in this Settlement Accord, all Parties are to bear their own costs of participating in this Settlement Accord; provided, however, that nothing in this Settlement Accord shall be interpreted as or constitute a commitment or requirement that the Federal agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

13 EXECUTION

Each signatory to this Settlement Accord represents that: (1) he or she is authorized to execute this Settlement Accord and legally bind the Party he or she represents; and (2) the Party he or she represents will be fully bound by the terms hereof. This Settlement Accord may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory parties had signed the same instrument. Any signature page of this Settlement Accord may be detached from any counterpart of this Settlement Accord without impairing the legal effect of any signature(s) thereon, and may be attached to another counterpart of this Settlement Accord identical in form hereto but having attached to it one or more signature pages.

Intending to be legally bound, the Parties have executed this Settlement Accord through their duly authorized representatives.

IN WITNESS WHEREOF, the Parties have caused this Settlement Accord to be executed as of the date set forth in this Settlement Accord.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____ Date: _____
Dr. Eugene W. Zeltmann, President and Chief Executive Officer
Power Authority of the State of New York

U.S. FISH AND WILDLIFE SERVICE OF THE U.S. DEPARTMENT OF THE INTERIOR

By: _____ Date: _____

Dr. Mamie A. Parker, Regional Director
U.S. Fish and Wildlife Service

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: _____ Date: _____
Erin M. Crotty, Commissioner
New York State Department of Environmental Conservation

NEW YORK STATE DEPARTMENT OF STATE

By: _____ Date: _____
[Name, Title]
New York State Department of State

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC
PRESERVATION

By: _____ Date: _____
Dominic Jacangelo, Deputy Director for Upstate New York & Resource
Management Group
New York State Office of Parks, Recreation and Historic Preservation

ST. LAWRENCE AQUARIUM AND ECOLOGICAL CENTER INC.

By: _____ Date: _____
Dr. Daniel Sullivan, Chairman, Board of Directors
St. Lawrence Aquarium and Ecological Center Inc.

NEW YORK RIVERS UNITED

By: _____ Date: _____
Bruce Carpenter, Executive Director
New York Rivers United

LOCAL GOVERNMENT TASK FORCE

By: _____ Date: _____
Roger Watters, Chairman
Local Government Task Force

ST. LAWRENCE COUNTY, NEW YORK

By: _____ Date: _____
Alex A. MacKinnon, Chair
St. Lawrence County Board of Legislatures

TOWN OF LOUISVILLE, NEW YORK

By: _____ Date: _____
Lawrence Legault, Supervisor
Town of Louisville, New York

TOWN OF LISBON, NEW YORK

By: _____ Date: _____
Roger Watters, Supervisor
Town of Lisbon, New York

TOWN OF MASSENA, NEW YORK

By: _____ Date: _____
Sanford T. Cook, Supervisor
Town of Massena, New York

TOWN OF WADDINGTON, NEW YORK

By: _____ Date: _____
William R. Greene, Supervisor
Town of Waddington, New York

VILLAGE OF MASSENA, NEW YORK

By: _____ Date: _____
Kenneth MacDonnell, Mayor
Village of Massena, New York

VILLAGE OF WADDINGTON, NEW YORK

By: _____ Date: _____
Elizabeth Phillips, Mayor
Village of Waddington, New York

LISBON CENTRAL SCHOOL DISTRICT

By: _____ Date: _____
Steve Bateman, President, Board of Education
Lisbon Central School District

MADRID-WADDINGTON CENTRAL SCHOOL DISTRICT

By: _____ Date: _____
June McQueeney, President, Board of Education
Madrid-Waddington Central School District

MASSENA CENTRAL SCHOOL DISTRICT

By: _____ Date: _____
John Lambert, President, Board of Education
Massena Central School District

APPENDIX A PROPOSED LICENSE ARTICLES

Prescription Article of the Secretary of the Interior and Secretary of Commerce Under FPA § 18

Article ____. Pursuant to Section 18 of the FPA, authority is reserved to the Commission to require the Licensee to construct, operate, and maintain, or provide for the construction, operation, and maintenance, of such fishways as may be prescribed by either the Secretary of the Interior or the Secretary of Commerce, as appropriate, acting in full consultation and coordination under the Fish and Wildlife Coordination Act. The Secretary of the Interior, acting through the U.S. Fish and Wildlife Service, and the Secretary of Commerce, acting through the National Marine Fisheries Service, agree to delay issuance of a Section 18 prescription for a downstream fishway while fish passage studies are being conducted, provided that the agencies determine that adequate information does not currently exist and that the appropriate studies are being diligently pursued.

Construction of Upstream Eel Passage Facilities

Article ____.

The Licensee shall construct, operate, and maintain, at its own expense, a ladder for upstream American Eel passage on the Robert Moses Power Dam. The United States Fish and Wildlife Service (“Service”) must approve the design and specification of the upstream eel ladder prior to the commencement of construction activities. The upstream eel ladder shall utilize state-of-the-art techniques to pass American Eel in accordance with the Service’s passage criteria, which will be established by the Service in consultation with the Authority as set forth in Article _____. The upstream eel ladder must be constructed within two (2) years of the effective date of this license, subject to an extension by mutual agreement of the Service and Licensee.

Operation of Upstream Eel Passage Facilities

Article ____. The upstream eel ladder facilities shall be operated on a continuous basis throughout the eel movement period, up to five months each year. Upon completion of construction of the upstream eel ladder, the Licensee shall operate the ladder on a continuous basis during the period of July 1 through October 31, in accordance with Section 4.2 of the FEMRF Settlement Agreement. Upon the submittal of scientific evidence by the Service, the Licensee, after consultation with the Service and other parties referenced in Section 4.2 of the FEMRF Settlement Agreement, is authorized, after notification to the Commission, to alter this period of continual operation, but in no event shall the period exceed five months per year.

Effectiveness Testing of Upstream Eel Passage Facilities

Article ____. The Licensee shall consult with the Service regarding the development of a plan for post-construction studies to monitor the effectiveness of the upstream eel passage facilities, pursuant to Section 4.3 of the FEMRF Agreement. At least 90 days prior to the start of operation of the upstream eel passage facilities, the Licensee shall file with the Commission an upstream eel passage monitoring plan, which shall include: (1) a schedule for implementing the monitoring plan and consulting with appropriate agencies; and (2) a plan for filing the monitoring results with the Commission. In accordance with Section 4.3 of the FEMRF Settlement Agreement, the Licensee shall implement effectiveness testing of the upstream American eel ladder.

Within two years of commencement of operation of the upstream eel passage facilities, the Licensee, in consultation with the Service, shall establish passage criteria for the upstream eel ladder; provided, however, that the Licensee may extend this deadline for establishing passage criteria upon the Licensee's notification to the Commission that the Licensee and Service have mutually agreed to an extension thereof. If the upstream American eel ladder is not meeting the established passage criteria, the Licensee, in consultation with the Service and other parties referenced in Section 4.3 of the FEMRF Settlement Agreement, shall make reasonable efforts to achieve these criteria through modification of the eel passage facilities and/or modification of the operations of the eel passage facilities. The Licensee shall notify the Commission in the event the upstream eel ladder facilities are modified, and shall seek Commission approval, as appropriate, for any such physical modification to the upstream eel passage facilities.

Fish Enhancement, Mitigation, and Research Fund

Article ____. Within twenty days after issuance of this license, the Licensee shall deposit \$24 million into an escrow account for the National Fish and Wildlife Foundation ("NFWF") to establish the Fish Enhancement, Mitigation, and Research Fund ("FEMRF"). The Licensee shall release these funds from the escrow account to the NFWF in accordance with Section 3.1.1.1 of the FEMRF Settlement Agreement.

The Licensee shall prepare an annual FEMRF compliance report for review by the Service and other parties referenced in Section 3.2.2.4 of the FEMRF Settlement Agreement ("Reviewing Parties"). Following review of the annual FEMRF compliance report by the Reviewing Parties, the Licensee shall file a copy of the annual FEMRF compliance report with the Commission for informational purposes.

Technical Advisory Council

Article ____. The Licensee shall facilitate and support the organization of a Technical Advisory Council ("TAC"), so as not to delay implementation of any of the Habitat Improvement Projects ("HIPs") required under Article _____. As set forth in Section 2.4 of the Ecological Mitigation and Enhancement Measures Settlement Agreement ("Ecological Settlement Agreement"), executed on _____, the TAC shall assist with the design, development, and monitoring of the HIPs established pursuant to Sections 2.1 and 2.3 of the Ecological Settlement Agreement.

Habitat Improvement Projects

Article ____. The Licensee shall design, construct, monitor, operate, and maintain the ten HIPs identified in Section 2.1 of the Ecological Settlement Agreement and set forth in detail in Appendix A of the Ecological Settlement Agreement. Within one year following the effective date of this license, the Licensee shall develop and prepare an HIP implementation plan for the design, construction, and effectiveness monitoring of each of the ten HIPs. The HIP implementation plan shall be filed with the Commission for approval.

The Licensee shall prepare the HIP implementation plan in consultation with the TAC, which contains both voting and advisory members (“Consulted Entities”), as set forth in Sections 2.1 and 2.4 of the Ecological Settlement Agreement. The Licensee shall include with the plan filed with the Commission documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Consulted Entities, and specific descriptions of how comments of the Consulted Entities are accommodated by the plan. The Licensee shall allow a minimum of 30 days for the Consulted Entities to make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation of a Consulted Entity, the filing shall include the Licensee’s reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No land-disturbing or land-clearing activities pertaining to such HIP shall begin until the Licensee is notified by the Commission that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

The Licensee shall submit an annual HIP compliance report to the Commission for informational purposes. The annual HIP compliance report shall list and describe all work performed on HIPs during the previous calendar year and identify all pre-construction, construction, and effectiveness monitoring activities to be conducted for any of the HIPs proposed for funding in the upcoming year. Prior to submitting the annual HIP compliance report to the Commission, the Licensee shall submit the report to the TAC for approval, in accordance with Section 2.1 of the Ecological Settlement Agreement. Following TAC approval, the Licensee shall exercise reasonable efforts in completing all pre-construction, construction, and effectiveness monitoring activities identified in the annual HIP compliance report for completion during the year.

For each of the ten HIPs set forth in Section 2.1 of the Ecological Settlement Agreement, the Licensee is authorized, after it has completed five years of post-construction monitoring of the HIP, to address the status of such HIP in every fifth of its annual HIP compliance reports.

Future Habitat Improvement Projects

Article _____. Within 20 days of the effective date of this license, and in accordance with Section 2.3 of the Ecological Settlement Agreement, the Licensee shall make available Future Habitat Improvement Funds (“FHF”) not to exceed \$3,920,000 (2003 dollars) to cover the design, construction, environmental monitoring, and operation and maintenance costs of future HIPs, as selected by the TAC, to be located on the St. Lawrence River or its tributaries within New York that benefit the St. Lawrence River ecology. After 2003, the available FHF shall be adjusted annually to account for the rate of inflation by averaging the indices from the Cost Trends of Building Construction contained in the Handy/Whitman Index (North Atlantic Region).

The Licensee is authorized to use FHF to fund HIPs located within or outside of the Project boundary, but the Licensee shall not use FHF to fund the HIPs listed in Sections 2.1 and 2.2 of the Ecological Settlement Agreement, unless approved by the TAC. For any TAC-approved future HIP that is located within the Project boundary and affects any Project structure, the Licensee shall, as appropriate, file with the Commission for approval an implementation plan detailing the design and construction of the HIP, and no land-disturbing or land-clearing activities pertaining to such HIP shall begin until the Licensee is notified by the Commission that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

For each HIP funded by the FHF that is located within the Project, the Licensee shall include such HIP in its annual HIP compliance report until the Licensee has completed five years of post-construction monitoring of the HIP, after which time the Licensee shall address the HIP in every fifth of its annual HIP compliance reports.

Wilson Hill Wildlife Management Area

Article _____. The Licensee shall design, construct, monitor, operate, and maintain the improvement projects to the Wilson Hill Wildlife Management Area (“WHWMA”) identified in Section 3 and set forth in detail in Appendix B of the Ecological Settlement Agreement. Within one year following the effective date of this license, the Licensee shall develop and prepare a WHWMA implementation plan for the design, construction, monitoring, operation, and maintenance of the WHWMA improvement projects. The Licensee shall file the WHWMA implementation plan with the Commission for approval.

The Licensee shall prepare the WHWMA implementation plan in consultation with the New York State Department of Environmental Conservation (“DEC”). The Licensee shall include with the plan filed with the Commission documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to DEC, and specific descriptions of how comments of DEC are accommodated by the plan. The Licensee shall allow a minimum of 30 days for DEC to make recommendations before filing the plan with the Commission. If the Licensee does not adopt a recommendation, the filing shall include the Licensee’s reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. No land-disturbing or land clearing activities shall begin until the Licensee is notified by the Commission that the plan is approved. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission.

The Licensee shall prepare an annual WHWMA compliance report to the Commission. The annual WHWMA compliance report shall list and describe all work performed under the WHWMA implementation plan during the previous calendar year and identify all pre-construction, construction, and effectiveness monitoring activities to be conducted under the implementation plan in the upcoming year. Following submittal with the Commission, the Licensee shall exercise reasonable efforts in completing the construction, pre-construction, and effectiveness monitoring activities identified in the annual WHWMA compliance report for completion during the year.

Once all improvement projects approved in the WHWMA implementation plan have been completed, the Licensee shall prepare the WHWMA compliance report every five years.

St. Lawrence River Research and Education Fund

Article ____. Within 20 days of the effective date of this license, and in accordance with Section 4 of the Ecological Settlement Agreement, the Licensee shall establish a St. Lawrence River Research and Education Fund (“SLRREF”) entrusting the principal sum of \$1,008,000 to one or more banks or trust companies doing business in the State of New York. As set forth in Section 4.2 of the Ecological Settlement Agreement, income from the SLRREF shall be used to provide financial support for environmental research and environmental education projects relating to the ecology of the St. Lawrence River watershed in the immediate vicinity of the Project, as well as to pay for operational costs (including expenses, grants, and other disbursements) of the SLRREF. As part of its annual compliance reporting, the Licensee shall submit to the Commission for informational purposes the SLRREF annual report, prepared in accordance with Section 4.3.2 of the Ecological Settlement, which describes funding activities of the SLRREF, including all active projects and a project-by-project listing of all expenditures of the previous year and planned expenditures for the current year.

Water Temperature Monitoring

Article ____. Within 180 days following the effective date of this license, the Licensee shall file with the Commission, for approval, a plan to monitor water temperatures in shallow areas of the South Channel downstream of Long Sault Dam for the reporting period of April 1 (or as soon as ice is no longer in the South Channel) through June 30 of each year (“Reporting Period”).

The water monitoring plan shall include provisions for: (1) the placement of water temperature monitors in the South Channel; (2) the frequency at which temperature data

will be collected; (3) notification requirements for spill events over Long Sault Dam, including the requirement for the Licensee to provide DEC reasonable advance notification for all planned spills over Long Sault Dam, and to notify DEC regarding any non-planned spills, as soon as practicable following the conclusion of such spills; and (4) annual reporting of monitoring data, including the provision to DEC, on or before September 30 of each year, a report describing the effects of spill events on water temperatures in the South Channel during the Reporting Period.

The Licensee shall prepare the plan after consultation with the New York State Department of Environmental Conservation (“DEC”). The water monitoring plan shall include a schedule for:

- a. implementation of the program (which must be implemented within 12 months from the effective date of this license);
- b. consultation with the DEC concerning the results of the monitoring; and
- c. filing the results, agency comments, and Licensee’s response to agency comments with the Commission.

The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the temperature monitoring plan, including any changes in the plan required by the Commission.

To the extent that spills over Long Sault Dam are not anticipated in any year during the period from April 1 to June 30, the Licensee may petition DEC to modify or suspend activities pursuant to the temperature monitoring plan for the year. Upon approval of DEC of the petition, the Licensee shall notify the Commission, providing the terms of DEC’s modification or suspension of the water monitoring plan for the year.

The Licensee, after consultation with the U.S. Fish and Wildlife Service, DEC, and New York Rivers United, may petition to DEC every fifth year to permanently modify or terminate the water monitoring plan for the South Channel. Upon approval of DEC of the petition, the petition may be submitted to the Commission as a request for amendment to this license article.

Land Management Plan

Article ____ . The Licensee, in consultation with appropriate parties with interest in land management issues, including, at a minimum, all parties to the Relicensing Settlement Agreement, executed February 22, 2002, by and among the Licensee, St. Lawrence County, Town and Village of Massena, Town of Louisville, Town and Village of Waddington, Town of Lisbon, Massena Central School District, Madrid-Waddington School District, and Lisbon School District (hereinafter “Local Government Agreement”), the U.S. Fish and Wildlife Service, and the New York State Department of Environmental Conservation, and any other Party to the Comprehensive Relicensing

Settlement Accord, executed on _____, that notifies the Authority of its interest in such consultation (“Consulted Parties”), shall develop and implement a Land Management Plan for Project lands, consistent with Attachment 1, Section V of the Local Government Agreement.

The Land Management Plan shall identify Project lands and all associated buffer zones, and shall establish guidelines for the use of these lands, including public access, construction activities, the protection and preservation of wildlife habitats and scenic and cultural resources, and commercial uses, in accordance with Attachment 1, Section V.A of the Local Government Agreement. The Land Management Plan shall also establish a vegetation management plan, in accordance with Attachment 1, Section V.B of the Local Government Agreement. Finally, the Licensee shall, in accordance with Attachment 1, Section V.C of the Local Government Agreement, have the authority to issue permits to the public or to State or Federal agencies for proposed Project land uses that are consistent with the guidelines of the Land Management Plan, and that cover, at a minimum, construction, maintenance, and operation of water dependent structures, and any existing structures and uses.

Within one year following the effective date of this license, the Licensee shall file the Land Management Plan with the Commission for approval. Prior to filing with the Commission, the Licensee shall allow a minimum of 30 days for all Consulted Parties to comment on the Land Management Plan. When filing the Land Management Plan with the Commission, the Licensee shall include documentation of its consultation with the Consulted Parties, including copies of the comments on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments are addressed by the proposed plan. The Commission reserves the right to require changes to the Land Management Plan, and the Licensee shall not commence land management activities until the Commission has approved the Land Management Plan.

Following Commission approval of the Land Management Plan, the Licensee shall prepare and submit to the Commission a Land Management Plan compliance report every five years. The Land Management Plan compliance report shall list and describe the land management activities performed during the previous five calendar year and identify any land management activities scheduled or anticipated to be conducted during the next five years.

Following issuance of any permits pursuant to the Land Management Plan, the Licensee shall have continuing responsibility to supervise, monitor, and control the use and occupancies for which the Permits were issued. If a permitted use and occupancy violates any condition of this article, guideline established in the Land Management Plan, or any other condition imposed by the Licensee for protection and enhancement of the project’s scenic, recreational, cultural or other environmental resources, the Licensee shall take any lawful action necessary to correct the violation, including, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

All specific-use permits issued by the Licensee under the Land Management Plan shall have a 5-year term and may be assigned or amended with the Licensee's consent. The Licensee shall not issue any permits for any construction or other activities that would interfere with public access to and use of Project lands, significantly increase flood damage liability, impede river views of adjacent landowners, or pose an unacceptable risk of damage to environmental, scenic, and cultural resources.

Navigation Hazards

Article ____. In accordance with the schedule set forth in the Recreation Plan submitted in its Application for New License, the Licensee shall install information kiosks, staff gages, and seasonal buoys to address navigation hazards within the Project boundary, as specified in Attachment 3 of the Local Government Agreement. The kiosks shall provide, at a minimum, information on the St. Lawrence River, rules of operation of watercraft at the specified locations, and fishing regulations. The staff gages shall inform the public of the expected water depth in Project waters. The Licensee shall identify, measure, and record the two concrete structures located in the water near the Hawkins Point Boat Launch, and such information shall be reported to the National Ocean Service within the National Oceanic and Atmospheric Administration and the Canadian Hydrographic Service for publication in navigation charts. The Licensee shall install and maintain seasonal buoys at these two concrete structures, as well as at the remains of the milk factory located in Project waters near Waddington.

Shoreline Stabilization

Article ____. The Licensee, in consultation with the Land Management and Recreation Committee referenced in Attachment 2 of the Local Government Agreement ("Committee"), shall develop a Shoreline Stabilization Plan to stabilize the eroding shorelines within the Project boundary. The Plan shall identify the areas to be stabilized and shall establish the criteria, method, and preliminary schedule for accomplishing stabilization, as set forth in Attachment 2, Section 1 of the Local Government Agreement. For work activities performed under the Shoreline Stabilization Plan, the Licensee shall provide up to \$500,000 annually, 25 percent of which shall be available, as determined by the Licensee, for adjoining landowners to perform small stabilization projects. The Licensee shall complete all stabilization work identified in the Shoreline Stabilization Plan within ten years following the effective date of this license.

Within one year following the effective date of this license, the Licensee shall file the Shoreline Stabilization Plan with the Commission for approval. Prior to filing with the Commission, the Licensee shall allow a minimum of 30 days for the Subcommittee to comment on the Shoreline Stabilization Plan. When filing the Shoreline Stabilization Plan with the Commission, the Licensee shall include documentation of its consultation with the Committee, including copies of the comments on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments are accommodated by the proposed plan. The Commission reserves the right

to require changes to the Shoreline Stabilization Plan. The Licensee shall not commence stabilization activities until after the Commission has approved the Shoreline Stabilization Plan.

Following Commission approval of the Shoreline Stabilization Plan, the Licensee shall submit an annual shoreline stabilization compliance report, which shall list and describe all stabilization work performed during the previous calendar year and identify all stabilization work to be performed in the current year.

Should the Licensee, after consultation with the Committee, determine that the stabilization work specified in the Shoreline Stabilization Plan has been completed earlier than 10 years following the effective date of this license, the Licensee is authorized to seek amendment of the license to permanently discontinue the requirements of this license article. Upon approval of the license amendment by the Commission, the Licensee's obligation to prepare an annual shoreline stabilization compliance report shall expire.

Recreation Facilities

Article ____. The Licensee, in consultation with all parties to the Comprehensive Accord ("Consulting Parties"), shall update and revise the Recreation Plan submitted to the Commission on October 31, 2001, as part of the Licensee's Application for New License. The revised Recreation Plan shall provide for the Licensee's design and arrangement for the construction or rehabilitation of the recreational facilities located in the Towns of Massena and Louisville, and in the Town and Village of Waddington, as specified in the Local Government Agreement, Attachments 4a section 1, 4b section 1, and 4c section 1, respectively; and at facilities located at the Robert Moses State Park, the Coles Creek State Park, and the Wilson Hill Boat Launch, as specified in the OPRHP Agreement, Attachments 1, 2, and 3, respectively.

Within 90 days following the effective date of this license, the Licensee shall file the revised Recreation Plan with the Commission for approval. Prior to filing with the Commission, the Licensee shall allow a minimum of 30 days for the Consulting Parties to comment on the revised Recreation Plan. When filing the revised Recreation Plan with the Commission, the Licensee shall include documentation of its consultation with the Consulting Parties, including copies of the comments on the proposed plan received during the consultation. Further, the Licensee should identify in its filing how the comments are accommodated by the proposed plan. The Commission reserves the right to require changes to the revised Recreation Plan to accommodate increased recreational use. The Licensee shall not commence rehabilitation or construction activities under the revised Recreation Plan until the Commission has approved the revised Recreation Plan and the Licensee has received any appropriate permits and certifications.

Every twelfth year following license issuance, the Licensee, in consultation with the Consulting Parties and using information submitted to the Commission in its two previously filed FERC Form 80 reports, shall prepare and file with the Commission a

Recreational Use Report assessing whether the recreation facilities at the Project are sufficient to meet the recreational demand. The Licensee shall monitor recreational use at the Project to ensure that such use is adequately accommodated. The Recreational Use Report shall include the results of the Licensee's monitoring program and a description of the methodology used to monitor recreational use at the Project.

Consolidated Annual Report

Article ____. For all compliance reports required under this license to be filed with the Commission, the Licensee shall prepare a single compliance report, consolidating all required compliance reporting information, each year. The consolidated annual report shall be filed with the Commission on or before June 1 of each year.

APPENDIX B GLOSSARY

Authority	Power Authority of the State of New York
BIA	Bureau of Indian Affairs
CCP	Cooperative Consultation Process
Commission	Federal Energy Regulatory Commission
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DEC	New York State Department of Environmental Conservation
Department	U.S. Department of the Interior
DOS	New York State Department of State
DRS	FERC Office of Dispute Resolution Services
ESA	Endangered Species Act
FAC	Fisheries Advisory Committee
FEMRF	Fish Enhancement, Mitigation, and Research Fund
FERC	Federal Energy Regulatory Commission
FHF	Future Habitat Improvement Fund
FPA	Federal Power Act
HIP	Habitat Improvement Project
HQ	Hydro Quebec
LMP	Land Management Plan
NEPA	National Environmental Policy Act
NFWF	National Fish and Wildlife Foundation

NMFS	National Marine Fisheries Service
NYRU	New York Rivers United
O&M	Operation and Maintenance
OPG	Ontario Power Generation
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
Service	U.S. Fish and Wildlife Service
SLAEC	St. Lawrence Aquarium and Ecological Center Inc.
SLRREF	St. Lawrence River Research and Education Fund
SRMT	St. Regis Mohawk Tribe
TAC	Technical Advisory Council
WHWMA	Wilson Hill Wildlife Management Area