

DRAFT

**AGREEMENT REGARDING FUNDING OF THE ST. LAWRENCE
RIVER VALLEY REDEVELOPMENT AGENCY**

This **AGREEMENT** ("Agreement"), dated as of May __, 2010, by and between the **POWER AUTHORITY OF THE STATE OF NEW YORK** ("Power Authority"), having an office at 123 Main Street, White Plains, NY 10601, the **ST. LAWRENCE RIVER VALLEY REDEVELOPMENT AGENCY**, a joint service board ("Board") established by and between the County of St. Lawrence, the Towns of Lisbon, Waddington, Louisville, and Massena, and the Villages of Waddington and Massena, with the Power Authority serving as a non-voting member, having an address of 80 State Highway 310, Suite 6, Canton, NY 13617, and the **ST. LAWRENCE COUNTY INDUSTRIAL DEVELOPMENT AGENCY LOCAL DEVELOPMENT CORPORATION**, a domestic, not-for-profit local development corporation ("Corporation"), having an address of 80 State Highway 310, Suite 6, Canton, New York 13617, with the three entities being referred to collectively herein as the "Parties".

WITNESSETH:

WHEREAS, the Power Authority owns and operates the St. Lawrence-FDR Power Project ("Project") located on the St. Lawrence River in St. Lawrence County, New York; and

WHEREAS, the Power Authority was issued a new 50-year license for the Project by the Federal Energy Regulatory Commission, effective November 1, 2003; and

WHEREAS, as set forth below, the Power Authority is desirous of providing \$16 million, which was part of the monies agreed to be provided by the Power Authority in the Comprehensive Relicensing Settlement Accord (dated January 15, 2003) for use in connection with development of a proposed Aquarium and Great Rivers Center ("Center") on the St.

Lawrence River in the Town of Massena, which development efforts for the Center have ceased; and

WHEREAS, the Board and the Corporation have entered into a definitive agreement, dated as of _____, 2010 (“Board-Corporation Agreement”), pursuant to which the \$16 million to be provided by the Power Authority hereunder shall be administered and utilized for economic development purposes in St. Lawrence County; and

WHEREAS, pursuant to its mission of providing low cost hydroelectric power within New York State, the Power Authority also is desirous of providing to the Town of Massena, Massena Electric Department 20 megawatts of such power (“Allocation”) in accordance with the requirements of the NYPA Act (Public Authorities Law, §§ 1000 *et seq*); and

WHEREAS, the Parties agree that the provision of such power by the Power Authority shall be the subject of a separate agreement (“Power Agreement”) which will effectuate the Allocation and be subject to review by the Power Authority’s Trustees as well as notice, hearing and other requirements of the NYPA Act;

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

I. Representations and Covenants

Each of the Parties represents and covenants that they each have the legal power and authority to execute this Agreement and duly perform their respective obligations hereunder, and that each of them has taken all actions and received all authorizations required by law to execute this Agreement and duly perform their respective obligations hereunder.

II. Establishment of the St. Lawrence River Valley Redevelopment Agency Fund (“RVRDA Fund”)

A. Within 30 days of the date of this Agreement, the Power Authority shall make an initial payment of \$8 million into the RVRDA Fund account designated by the Board. Within 180 days following the Power Authority’s first payment, the Power Authority shall make a final payment into the RVRDA Fund of \$8 million.

B. The RVRDA Fund monies, including the interest earned thereon, shall be used exclusively for economic development in St. Lawrence County. The parties agree that such purposes include without limitation the making of loans or grants to businesses, payment of administrative expenses and fees of the Board and the Corporation relating to economic development in the County, and use of up to 5% on an annual basis of the unrestricted cash assets in the RVRDA Fund as of January 1 of each year for community development and improvement projects including environmental-related projects, all as set forth in the Board-Corporation Agreement.

III. Annual Financial Audit

The Board and Corporation shall ensure that a financial audit of the RVRDA Fund is performed annually by a certified public accountant, and that the results of each such audit shall be available to the public and submitted to the Power Authority.

IV. Certain Account

A. The Power Authority seeks to provide for use within St. Lawrence County certain financial benefits of the energy associated with the Allocation in order to promote economic development. As such, the Power Authority shall establish and maintain internally an account (“Account”) that will contain amounts equal to the product of the following factors: (1) that portion, if any, of the Allocation that is not allocated to and taken by the Town of Massena, Massena Electric Department’s economic development customers, which on and after the date five years from the effective date of the Power Agreement shall not exceed ten (10) megawatts,

(2) 70% (.70) or the actual capacity factor of the Project whichever is lower, and (3) the “net value” of the power for each monthly period, such “net value” being the difference between the Power Authority’s cost-based hydroelectric rate for power and energy and the prevailing wholesale market price at the Project in the market administered by the New York Independent System Operator (“NYISO”) or its successor. The Account shall not accrue interest. The Power Authority will commence accruals in the Account on the effective date of the Power Agreement.

B. The Power Authority shall make disbursements from the Account upon receipt in writing of a request which shall include: (1) the amount requested, (2) a detailed description of the intended use of the funds, and (3) the anticipated economic development benefits resulting therefrom. Requests may be submitted (1) by the Board for disbursements to be made to the account of a municipality or (2) by the Board and Corporation jointly for disbursements to be made to the account of the Corporation. The Power Authority shall make reasonable efforts to remit payment within 30 days of receipt of the request. In no event will the Power Authority be obligated to disburse payments in excess of the amount available in the Account. The Account shall terminate upon termination of the Power Agreement or of any new or modified agreement entered into by the Power Authority and the Town of Massena, Massena Electric Department to provide Project power and energy for the remaining duration of the current Project license from FERC, whichever is later. There shall be no obligation of the Power Authority to make any disbursements from the Account after such termination.

V. Annual Report

The Board and Corporation shall prepare an annual report each year which shall be available to the public and submitted to the Power Authority by March 1. The annual report, at a minimum, shall include: (a) a summary of all active projects funded in whole or in part by the RVRDA Fund; (b) a project-by-project listing of all expenditures from the RVRDA Fund during the previous year; (c) a detailed listing of all planned expenditures from the RVRDA Fund during the current year in which the report is issued; (d) an updated balance sheet and other financial reports for the RVRDA Fund which includes expenditures, administrative expenses and

fees, and accrued interest; and (e) regarding the previous year: a listing of the monies disbursed from the Account by the Power Authority, the stated purpose of each such disbursement from the Account, and a detailed reconciliation with the actual expenditures made. Regarding any annual report filed pursuant to this Section V., the Board and Corporation agree to promptly provide such additional information as the Power Authority may reasonably request.

VI. Miscellaneous

A. This Agreement shall be governed and construed in accordance with the laws of the State of New York.

B. This Agreement may not be amended without the written consent of all the Parties hereto and may not be assigned by any party without the written consent of all the Parties hereto.

C. The Board and Corporation agree that any amendment to the Board-Corporation Agreement which would materially affect control or use of either the RVRDA Fund monies or monies disbursed from the Account shall not be effective without the prior written consent of the Power Authority.

D. In the event the Board-Corporation Agreement is terminated and not replaced with an arrangement to continue the economic development purposes of such agreement on terms accepted in writing by the Power Authority: (1) the balance of any unused monies in the RVRDA Fund, including interest, shall be refunded to the Power Authority; provided, however, that any monies already duly encumbered by binding agreements relating to economic development at the time of such termination shall not be so refunded; (2) any monies so refunded to the Power Authority shall be used for economic development purposes in St. Lawrence County; and (3) accruals and disbursements from the Account shall cease.

E. In the event of any dispute arising from this Agreement, the Parties agree to engage in good faith consultation and discussion in an attempt to resolve such dispute.

F. None of the Parties shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control including, but not limited to Acts of God, governmental restrictions, severe weather events, earthquakes, or acts of the public enemy.

G. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person, firm, corporation, or any other entity except the Parties hereto.

H. Each Party consents to the exclusive jurisdiction and venue of the New York State Supreme Court, Albany County, for adjudication of any claim, suit, action, or any other proceeding in law or equity arising under or relating to this Agreement.

I. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Date:

COUNTY OF ST. LAWRENCE

By: _____

Date:

TOWN OF LISBON

By: _____

Date:

TOWN OF WADDINGTON

By: _____

Date:

TOWN OF LOUISVILLE

By: _____

Date:

TOWN OF MASSENA

By: _____

Date:

VILLAGE OF WADDINGTON

By: _____

Date:

VILLAGE OF MASSENA

By: _____

Date:

THE ST. LAWRENCE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY LOCAL
DEVELOPMENT CORPORATION

By: _____

Date: