

Construction Services Agreement
Among The
Niagara Mohawk Power Corporation d/b/a National Grid
And
The Village of Churchville, New York

Dated as of April 27, 2011

CONSTRUCTION SERVICES AGREEMENT

THIS CONSTRUCTION SERVICES AGREEMENT ("Agreement") is made and entered into as of this 27th day of April, 2011 (the "Effective Date"), by and between The Village of Churchville, New York ("CHURCHVILLE"), a New York municipality; and Niagara Mohawk Power Corporation d/b/a National Grid (the "Company" or "National Grid"). CHURCHVILLE and Company shall be referred to herein, individually, as a "Party" and, collectively, as the "Parties."

WITNESSETH

WHEREAS, CHURCHVILLE owns and operates a municipal electric system which is currently interconnected to and receives transportation services from Company at CHURCHVILLE's existing substation on Richmond Avenue in the Village of Churchville (the "Existing Substation").

WHEREAS, CHURCHVILLE is constructing a transmission line and substation located at 54 Sanford Road North, Village of Churchville at CHURCHVILLE's expense, in accordance with the standards and requirements of the Company along with + or - 420 feet of 34.5 kV sub-transmission line to interconnect with Company's 34.5 kV sub-transmission line number 201 located in the Village of Churchville, Monroe County;

WHEREAS, CHURCHVILLE desires Company to engineer, procure and construct certain facilities detailed herein to interconnect the new, second (REPLACEMENT) substation located on Sanford Road North Road, in the Village of Churchville, to Company's existing 34.5 kV transmission system (the "Project") for the purpose of accommodating the village's needs; and

WHEREAS, Company will provide, at CHURCHVILLE's sole cost and expense, design, engineering, procurement, construction, and project management for the Project;

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein, the Parties agree as follows:

1.0 Definitions

Wherever used in the Agreement with initial capitalization, whether in the singular or the plural, these terms shall have the following meanings:

“Actual Costs” means the total actual costs and expenses for all Work and services that COMPANY provides in connection with this Agreement. These total actual costs shall include, without limitation, the actual expenses for labor, services, materials, subcontracts, equipment or other expenses utilized in the execution of the Work under this Agreement and all applicable overheads and taxes.

“Day” means a calendar day, except that if an obligation of the Agreement falls due on a Saturday, Sunday or legal holiday, it shall be due the next day worked.

"Dollars" and "\$" mean United States of America dollars.

“Estimated Contract Price” means the Actual Costs that the Company and CHURCHVILLE expect, as of the Effective Date, CHURCHVILLE to pay in connection with the Work as set forth in Section 3.2 of this Agreement. The Estimated Contract Price does not include applicable taxes.

"Final Acceptance" for the Project means that date when the Company determines that the Work has been completed and the Tap Line and New Substation are ready to be energized.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Project is located. Good Utility Practice shall include, but not be limited to, NERC (defined below) criteria, rules, guidelines and standards, NPCC (defined below) criteria, rules, guidelines and standards, NYSRC (defined below) criteria, rules, guidelines and standards, and NYISO (defined below) criteria, rules, guidelines and standards, where applicable, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities. When applied to CHURCHVILLE, the term Good Utility Practice shall also include standards applicable to a municipal electric system connecting to the distribution or transmission facilities or system of another utility.

“NPCC” shall mean the Northeast Power Coordinating Council (a reliability council under Section 202 of the Federal Power Act) or any successor organization.

“NERC” shall mean the North American Electric Reliability Corporation or any successor organization

“NYISO OATT” shall mean the FERC-approved Open Access Transmission Tariff for the NYISO and/or the FERC-approved Service Tariff for the NYISO, as applicable, and as it may be amended from time to time.

“NYSRC” shall mean the New York State Reliability Council or any successor organization.

"Project Manager" means the respective representative of CHURCHVILLE and the Company.

"Site" means the portion of the Company's existing Line 201 where the line switch will be installed and connection to the CHURCHVILLE Tap Line will be completed.

"Specification" means Company's ESB 752 and Company's construction standards for line construction.

"Subcontractor" means any organization, firm or individual, regardless of tier, which the Company retains during the term of the Agreement to provide labor, materials, Services, and/or equipment in connection with the Agreement.

"Supplemental Conditions" means those terms and conditions, if included in the Agreement by mutual written agreement of the Parties, which add to or modify the Agreement and are incorporated by reference as if fully set forth in the Agreement. In the case of a conflict between the Supplemental Conditions and the Agreement, the Supplemental Conditions shall prevail.

"Work" means all duties, responsibilities, and obligations to be performed by the Company as described in Section 3.0 of the Agreement.

2.0 **Term**

- 2.1 The Agreement shall become effective when executed by both Parties and shall remain in full force and effect until Final Payment is received by the Company.

3.0 **Scope of Work**

- 3.1 The Company's scope of Work for the Project is as follows:

- 3.1.1 Install junction pole on Company's existing 34.5 kV subtransmission line number 201.
- 3.1.2 Inspect and approve CHURCHVILLE's construction of Sanford Road North substation (the "New Substation").
- 3.1.3 Inspect and approve CHURCHVILLE's construction of + or – 420 feet of 34.5 kV Tap line from the New Substation to Company's existing 34.5 kV sub transmission line 201 (the "Tap Line") as constructed prior to final connection.
- 3.1.4 Finalize connection to CHURCHVILLE switchpole.
- 3.1.5 Functional testing of the New Substation, Tap Line and line switch.
- 3.1.6 Energize Tap Line and the New Substation.
- 3.1.7 De-energize and disconnect existing 34.5 kv tap to Existing Substation (the "Existing Tap Line Assets").
- 3.1.8 Any other reasonable work necessary to complete the above.

- 3.2 For the Scope of Work, the Estimated Contract Price is as follows:

Labor Cost (straight time & overtime)	\$ 9035.09
Engineering and Relay Review and Witness Testing	\$11,000.00
Transportation	\$ 849.00
Material and Supplies	\$1816.00
Handling of M&S	\$ 298.19
Sales tax on Materials 8.00%	\$ 145.28
Material Costs	\$ 2259.47
Other Costs Not included above	\$ 3000.00
Subtotal of above line items	\$28,403.03
Capital Overheads	\$1,364.43
Subtotal of above line items	\$29,767.46
Administrative & General	\$3,493.09
Subtotal of above line items	\$33,260.55

Total Estimated Contract Price **\$ 33,260.55**

The Parties acknowledge and agree that the Estimated Contract Price is an estimate only and that CHURCHVILLE shall pay Company's Actual Costs.

4.0 Changes in the Work

- 4.1 Each Party shall inform the other (prior to the start of Work) in writing of the name and contact information for the respective Project Managers per Section 27.1 of this Agreement.
- 4.2 If the Parties agree to a change in the Work, such change will be set forth in writing, as set forth in this Article 4.0, the schedule shall be adjusted and/or extended as mutually agreed by the Parties. The Estimated Contract Price shall be adjusted accordingly. If the Parties fail to agree to a change in the Work requested by either Party, then, upon the written request of either Party, Work shall be suspended pending resolution of the dispute.
- 4.3 Any requests for changes in the Work shall be put in writing. Any such changes agreed to by the Parties shall be performed in accordance with the terms and conditions of the Agreement, unless otherwise agreed to in a writing signed by the Project Managers of the Company and CHURCHVILLE.

5.0 Performance and Schedule

- 5.1 The Company shall use Good Utility Practices in performance of the Work.
- 5.2 The Company shall attempt to reasonably limit Work performed by its direct employees to normal working hours. Extended hours shall be subject to additional compensation to the Company for the costs thereof, which shall be reflected in the Actual Costs, with CHURCHVILLE's approval, which approval shall not be unreasonably withheld, conditioned, or delayed.
- 5.3 If CHURCHVILLE requests, and Company agrees, to work outside normal working hours, then Company shall be entitled to recover all costs in connection therewith as part of the Actual Costs.
- 5.4 Projected Project Milestone Schedule:

May 1, 2011 - CHURCHVILLE completes building 34.5kV Tap Line as specified.

May 1, 2011 - Company completes review and approval of drawings submitted by CHURCHVILLE.

May 1, 2011- CHURCHVILLE grants all permits and easements to Company in form and substance satisfactory to Company

Completed - CHURCHVILLE completes New Substation.

May 1, 2011 – Company sets pole and connects existing Tap Line

June 1, 2011 – Company inspects and approves the Tap Line

June 1, 2011– Company conducts relay witness testing and inspects and approves New Substation constructed by CHURCHVILLE.

July 1, 2011 – Ownership of Tap Line transferred from CHURCHVILLE to Company.

July 1, 2011 – Company performs functional testing.

July 1, 2011 – Company Customer Facilities Engineer (CFE) conducts final operational interconnection inspection to ensure operational readiness and compliance for energization.

July 15, 2011 – Company energizes Tap Line and New Substation.

July 1, 2012 – Company disconnects existing tap to Existing Substation

January 1, 2013 - CHURCHVILLE completes removal of existing tap to Existing Substation

January 1, 2013 -- Project Close-out by Parties

The dates above represent the Parties' preliminary schedule, which is subject to adjustment, alteration, and extension in accordance with the terms of this Agreement. Neither Party shall be liable for failure to meet any milestone in connection with the Project or the Work.

6.0 Contract Price

6.1 The Estimated Contract Price, is an estimate only. CHURCHVILLE shall pay all Actual Costs.

7.0 Payment

7.1 Prior to the Company's commencement of any Work under this Agreement, and within thirty Days of the Effective Date of this Agreement, the Company shall invoice CHURCHVILLE for an initial prepayment of thirty three thousand, two hundred sixty Dollars and 55 Cents (\$33,260.55) ("Initial Prepayment") and CHURCHVILLE shall provide the Company with such Initial Prepayment. On a quarterly basis commencing three (3) months from the Effective Date until the Final Acceptance of the Project, the Company shall request by invoice additional funding from CHURCHVILLE.

7.2 Except as otherwise expressly provided for in the Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any CHURCHVILLE payment due under this Agreement is not received within five (5) Days of invoice due date, a monthly charge equivalent to 1/12 of the maximum prime commercial rate per annum prevailing during that particular billing period and announced by Chase Manhattan at its principal office in New York, New York, or by any other bank agreed to by the Company and CHURCHVILLE, plus two (2) percent shall be added to the amount overdue and shall be payable by CHURCHVILLE to the Company; such charge shall be calculated on the unpaid balance, beginning on the invoice due date until payment of the overdue amount is received.

7.3 The Company shall invoice CHURCHVILLE for all sums owed under this Agreement including Initial Prepayment on a quarterly basis based on the estimated costs for the following quarter for all or any part of the Company's Work costs to the following individual or such other individual as CHURCHVILLE may designate upon written notice to the Company:

Name: Superintendent, Churchville Electric
Address: Village of Churchville
23 E Buffalo Street PO Box 613
Churchville, NY 14428

7.4 Payments to the Company shall be made by check or by wire transfer. In the case of a wire transfer, payments shall be made to the following account:

HSBC Bank
ABA: 021001088
Title of Account Niagara Mohawk Power Corporation
Acct. No.: 204891787

8.0 Final Payment

- 8.1 Final payment shall be made within thirty (30) Days after invoice date. Within ninety (90) Days of the energization of the New Substation and Tap Line the Company shall perform an overall reconciliation of the Actual Costs to the costs previously invoiced to, and paid to Company by, CHURCHVILLE for the Work, and the Company shall provide a final invoice for an amount due to the Company, or credit owed to CHURCHVILLE, as the case may be. Any credit owed by the Company to CHURCHVILLE shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any amount remaining unpaid to the Company after that time shall be subject to interest as calculated pursuant to Section 7.2.

9.0 Meetings; Interconnection Agreement

- 9.1 The Company's Project Manager shall attend Project meetings when required by either Party.
- 9.2 Company and CHURCHVILLE will each use commercially reasonable efforts to negotiate and enter into a mutually acceptable interconnection agreement to establish business, maintenance and operational terms and conditions that pertain to the interconnection of CHURCHVILLE's Existing Substation and the New Substation. This Section 9.2 shall survive completion or expiration of this Agreement.

10.0 Disclaimers; Liability and Indemnification

- 10.1 Except as provided in Section 5.1, COMPANY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES IN CONNECTION WITH THE AGREEMENT, ANY PROJECT, OR ANY WORK OR SERVICES PERFORMED IN CONNECTION THEREWITH, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT. CHURCHVILLE ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES PROVIDED BY ORIGINAL MANUFACTURERS, LICENSORS, OR PROVIDERS OF MATERIAL, EQUIPMENT OR OTHER ITEMS PROVIDED OR USED IN CONNECTION WITH THE WORK, INCLUDING ITEMS INCORPORATED IN THE WORK ("THIRD PARTY WARRANTIES"), ARE NOT TO BE CONSIDERED WARRANTIES OF THE COMPANY AND THE COMPANY MAKES NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES AS TO THE APPLICABILITY OR ENFORCEABILITY OF ANY SUCH THIRD PARTY WARRANTIES.
- 10.2 To the fullest extent permitted by law, CHURCHVILLE shall indemnify and hold harmless, and at Company's option, defend Company, its affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees, from and against any and all claims and/or liability for damage to property or injury or death of any person, or any other liability incurred by Company or its affiliates or their respective contractors, officers, directors, employees, servants, agents, or representatives, including expenses, legal or otherwise, to the extent caused by (i) any breach of this Agreement by CHURCHVILLE, its affiliates, third party contractors, and their respective officers, directors, servants, agents, representatives, or employees, or (ii) the negligence or intentional misconduct of CHURCHVILLE, its affiliates, third party contractors, and their respective officers, directors, servants, agents, representatives, and employees, arising out of or connected with the Agreement, Project, or any associated Work except to the extent such breach is directly caused by the negligence or unlawful act of the Company.
- 10.3 Neither Party shall be liable to the other Party for consequential, indirect, special, incidental, multiple, or punitive damages (including, without limitation, attorney's fees or litigation costs) in connection with or related to the Agreement, including without limitation damage claims based on causes of action for breach of contract, tort (including negligence) or any other theory of recovery, whether or not such Party was, or should have been, aware that such damages might be incurred.

- 10.4 Except to the extent that an element of profit is included in the Contract Price for Work as determined under the Agreement and such amounts are past due and owing to the Company, neither Party shall be liable to the other Party for claims of lost profits, whether such claims of lost profits are categorized under the Agreement as direct or consequential damages, or whatever the theory of recovery.
- 10.5 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure to perform hereunder to the extent such failure arises from the acts or omissions of the other Party (including any contractor of such Party or any person or entity for which such Party is legally responsible) or any third party.
- 10.6 Notwithstanding any other provision of the Agreement, this Article shall survive the termination or expiration of the Agreement.

11.0 Passage of Title and Risk of Loss; Tap Line Transfer.

- 11.1 The Company makes no warranty, guaranty, or representation with respect to ownership of, or title to, goods, products, or equipment, in whole or in part, and the Company does not purport to grant any license to CHURCHVILLE or its affiliates, with respect to any third party trademark, patent, or other intellectual property right in connection with the goods, products, or equipment, whether or not such third party property is contained in or comprises such goods, products, or equipment, in whole or in part.
- 11.2 Company shall bear no risk of loss or damage of any kind or nature whatsoever with respect to the cost of all packaging and shipment of equipment and material to the Site, of all unloading, storage, protection and installation of equipment and material at the Site, and of any insurance on the equipment prior to energization of the Tap Line and the New Substation, regardless of whether title has passed to the Company.
- 11.3 The Parties shall mutually determine a date on which the Tap Line and New Substation will be ready to be energized ("Anticipated Energization Date"). Not later than fifteen (15) days prior to the Anticipated Energization Date, and subject to the receipt of any Required Regulatory Approvals as contemplated by Section 27.11 of this Agreement, CHURCHVILLE shall transfer to Company good, clear and marketable title to the Tap Line for the consideration of one dollar (\$1.00) pursuant to an Asset Purchase Agreement, which Asset Purchase Agreement shall be substantially in the form set forth in Attachment 3 to this Agreement. Upon such transfer, title to and risk of loss with respect to the Tap Line will transfer from CHURCHVILLE to Company.

CHURCHVILLE shall secure warranties from its subcontractors, manufacturers and suppliers in connection with the Tap Line that are acceptable in form and substance to the Company ("Warranties"). The Warranties shall be in place on the closing date of the Tap Line transfer to the Company, expire not less than one (1) year following such date and be fully assignable to the Company without cost to the Company. Simultaneously with transfer of the Tap Line to the Company, CHURCHVILLE shall transfer to the Company any and all Warranties or other benefits or rights which CUSTOMER has received from contractors, manufacturers or suppliers relating or pertaining to the Tap Line.

On or before the date the Tap Line is transferred to the Company as contemplated by this Article, CHURCHVILLE shall provide the Company with New York State PE certified as-built drawings for the Tap Line.

On or before the date the Tap Line is transferred to the Company as contemplated by this Article, CHURCHVILLE shall convey, transfer or grant all easements, access rights, permits, rights of way, fee interests or other rights to Company (each in form and substance satisfactory to COMPANY in its sole discretion) required for COMPANY to own, operate and maintain the Tap Line ("Tap Line Rights").

For the avoidance of doubt: the Company shall not have any obligation to proceed with transfer of the Tap Line, or with energization of the Tap Line or the New Substation, unless the Company is satisfied that (i) the Tap Line has been engineered (by a Professional Engineer licensed and registered in New York state), procured, constructed and maintained, at all times, in accordance with Good Utility Practice, the National Electrical Safety Code, all applicable Federal, state, and local laws, rules, ordinances, and regulations, and the Specifications and requirements of the Company and otherwise in compliance with the terms and conditions of this Agreement, (ii) construction, installation and testing of the Tap Line is complete and the Tap Line is in good and operable condition and useable for its intended purposes, (iii) CHURCHVILLE has conveyed the Tap Line Rights, and (iv) Company possesses all other licenses, permits, franchises, regulatory approvals and other authorizations, approvals, and consents necessary for the transfer, ownership and operation of the Tap Line, and the same are valid, and in full force and effect.

Not less than 30 days following the later of (i) the date the Tap Line and the New Substation are energized, (ii) the date that the Company secures a release of lien for the Existing Tap Line Assets pursuant to the Company's applicable first mortgage indenture, and (iii) the date Company obtains any applicable Required Regulatory Approval, Company shall transfer to CHURCHVILLE Company's interest in the Existing Tap Line Assets for the consideration of one dollar (\$1.00) pursuant to an Asset Sale Agreement, which Asset Sale Agreement shall be substantially in the form set forth in Attachment 4 to this Agreement. Upon such transfer, title to and risk of loss with respect to the Existing Tap Line Assets will transfer from Company to CHURCHVILLE. CHURCHVILLE shall dismantle, remove and dispose of the Existing Tap Line Assets at its sole risk, cost and expense within 180 days following the date of such transfer. In the event that Company or CHURCHVILLE are unable to obtain any Required Regulatory Approval in connection with the proposed transfer of the Existing Tap Line Assets, Company may remove the Existing Tap Line Assets at CHURCHVILLE's cost and expense.

12.0 Insurance Requirements

- 12.1 Prior to commencing Work on the Project and during the term of the Agreement, each Party, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Schedule 1 to the Agreement, or shall, at the Party's sole and absolute discretion, elect to self-insure provided that the Party electing to self-insure provides written notice to the other Party prior to commencing any Work under this Agreement. In the event that either Party uses subcontractors in connection with this Agreement, said Party shall require all subcontractors to provide the same insurance coverages set forth in Schedule 1.
- 12.2 Prior to commencing the Work, each Party, provided that such Party does not elect to self insure, shall have its insurer, if any, furnish to the other Party certificates of insurance, on forms approved by the Insurance Commissioner of the State of New York, evidencing the insurance coverage required by this Article 13.0.
- 12.3 Each Party shall be solely responsible for the claims of its respective employees and shall release, defend, and indemnify the other Party and its affiliates from and against such claims.

13.0 Assignment and Subcontracting

- 13.1 CHURCHVILLE and the Company may assign the Agreement or any part thereof to any affiliated company controlling, controlled by, or under common control with, the assignor. For purposes of this Section, "control" of an entity shall mean the ownership of, with right to vote, fifty percent (50%) or more of the outstanding voting securities or equity of such entity. Any assignment of the Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party.

14.0 Independent Contractor

14.1 The Company and CHURCHVILLE are, and shall at all times remain, independent contractors.

15.0 Examination, Inspection and Testing

15.1 The Company shall inspect all Work and make or cause to be made all tests required by Good Utility Practice at CHURCHVILLE's sole cost and expense.

15.2 At times and places mutually agreed to by the Parties, CHURCHVILLE or its designated representative shall be entitled to witness any test required by the Agreement.

15.3 Company or its designated representatives shall be entitled to witness any test of the Tap Line at CHURCHVILLE's sole cost and expense.

16.0 Safety

16.1 Each Party shall be responsible for the safety and supervision of its respective employees involved with the Work or on the Site. In connection with this Agreement and the Project, both Parties shall, and shall require their respective representatives, contractors, and employees to, comply with all applicable Federal, state and local safety requirements, rules, regulations, laws and ordinances, including without limitation, compliance with the safety regulations adopted under the Occupational Safety and Health Act of 1970 (OSHA), as amended from time to time.

17.0 Approvals, Permits and Easements

17.1 The actual cost of obtaining any permits, licenses, permissions, or consents obtained by Company necessary for the Project and the Work shall be paid for by CHURCHVILLE and shall be included in the Actual Costs.

17.2 CHURCHVILLE shall provide to Company an easement, in form and substance satisfactory to the Company in its sole discretion, for the access, installation and construction on CHURCHVILLE property for any necessary foundations, structures and equipment as required by the Project or as otherwise may be required for the Work.

17.3 CHURCHVILLE shall provide to Company a permanent easement, in form and substance satisfactory to the Company in its sole discretion, on CHURCHVILLE property for ownership, maintenance, access to and operation of all foundations, structures, equipment and other assets installed in connection with the Project that will be owned, operated or maintained by Company.

18.0 Environmental Protection; Hazardous Materials or Conditions.

- 18.1 The Company shall in no event be liable to CHURCHVILLE, its affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives or any third party with respect to, or in connection with, the presence of any hazardous wastes, conditions, or substances which may be present at or on any CHURCHVILLE owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third party property) or which the Company may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company. CHURCHVILLE agrees to hold harmless, defend, and indemnify the Company, its affiliates and subcontractors, and their respective directors, officers, agents, servants, employees and representatives from and against any and all claims and/or liability in connection with, relating, to or arising out of (i) said presence, discovery, release or generation, or (ii) the breach of any Federal, state, or local laws, rules, regulations, codes, or ordinances relating to the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 et seq., except to the extent such breach is directly and solely caused by the negligent or unlawful act of the Company. The obligations under this Section 18.1 shall not be limited in any way by any limitation on CHURCHVILLE's insurance. The provisions of this Section 18 shall survive the expiration or earlier termination of this Agreement.
- 18.2 CHURCHVILLE shall promptly inform the Company, in writing, of any hazardous materials or substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in CHURCHVILLE owned, occupied, used, or operated facilities or property (including, without limitation, easements, rights-of-way, or other third party property) to be used or accessed in connection with the Work or Project. Prior to commencement of the Work, CHURCHVILLE shall be obligated to use its best efforts (including, without limitation, the use of DIGSAFE or other similar services) to adequately investigate the presence and nature of any such hazardous materials or substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. CHURCHVILLE's provision to the Company of the information contemplated in this Section 18.2 shall in no event give rise to any liability or obligation on the part of the Company, nor shall CHURCHVILLE's obligations under Section 18.1, above, or under law, be decreased or diminished thereby.

19.0 Right to Suspend Work

- 19.1 Subject to Section 19.2, below, CHURCHVILLE may interrupt, suspend or delay execution of the Project upon written notice to the Company to specifying the nature and expected duration of the interruption, suspension or delay. If, in the Company's opinion, such interruption would result in increased cost, the Company shall notify CHURCHVILLE in writing.
- 19.2 As a precondition to the Company resuming Work, the estimated schedule and Estimated Contract Price as determined under the Agreement shall be revised as mutually agreed by the Parties to compensate for the interruption, suspension or delay. If the Parties fail to agree to such revisions, then, upon the written request of either Party, Work shall be suspended pending resolution of the dispute. Adjustments to the Estimated Contract Price shall compensate the Company for any costs or expenses the Company reasonably incurs as a result of the interruption, suspension or delay.

20.0 Right to Terminate Agreement

20.1 Notwithstanding any other provision of the Agreement, if either Party (1) fails to comply with any of the material terms or conditions of the Agreement; (2) sells or transfers all or substantially all of its assets; (3) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (4) makes a general assignment for the benefit of its creditors, then the other Party shall have the right, without prejudice to any other right or remedy and after giving five (5) Days' written notice and a reasonable opportunity for cure, to terminate the Agreement, in whole or part, and thereupon the Company shall immediately discontinue its Work to the extent feasible.

21.0 Removal of Equipment

21.1 In the case of termination of the Agreement, the Company, if notified to do so by CHURCHVILLE, shall, within a reasonable time, remove any part or all of its equipment, material, and supplies from the Site at CHURCHVILLE's sole cost and expense.

22.0 Force Majeure

22.1 A "Force Majeure Event" shall include fire, flood, windstorm, adverse weather conditions, emergencies, explosion, riot, war, sabotage, acts of God, strikes or labor slow-downs, court injunction or order, federal and/or state law or regulation, delays by governmental authorities in approving license and permit requests necessary to the Project or in connection with the Work or the performance contemplated by this Agreement, or order by any federal or state regulatory agency, or other similar causes beyond the affected Party's reasonable control. Without limiting the foregoing, a "Force Majeure Event" shall also include unavailability of personnel, equipment, supplies, or other resources ("Resources") due to diversion of such Resources for other utility-related duties in connection with an emergency, including, without limitation, storms or other adverse weather condition. If a Force Majeure Event should occur and impair the ability of either or both Parties to perform its, or their respective, obligations hereunder, then, to the extent affected by such Force Majeure Event, the performance of this Agreement, with the exception of payment obligations, shall be suspended for the duration of such Force Majeure Event. At the conclusion of a Force Majeure Event, the price and time for performance under this Agreement shall be adjusted as reasonably necessary to overcome the effect of the delay occasioned by such Force Majeure Event. The foregoing notwithstanding and with the exception of payment obligations, if, as the direct or indirect result of any Force Majeure Event, the Parties' continued performance hereunder becomes irreparably impaired or prevented, the Parties may mutually agree to terminate this Agreement, in whole or in part, with no further obligation or liability; provided, however, that, notwithstanding any such terminations, CHURCHVILLE shall pay the Company all of the Company's costs and expenses incurred, and fees earned, up to the effective date of such termination.

22.2 Within thirty Days after the termination of any delay occasioned by a Force Majeure Event, the affected Party shall give written notice to the other Party specifying the estimated impact of the delay.

23.0 Extensions of Time

23.1 The estimated schedule for the Work shall be adjusted for changes in the Work, as provided in Article 4.0, and for events of Force Majeure.

24.0 Proprietary and Confidential Information

24.1 Each Party acknowledges that in the course of the performance of this Agreement it may have access to Proprietary Information, as hereinafter defined, of the other Party. Proprietary Information shall include (i) all, technical and other non-public or proprietary information which is furnished or disclosed by the Disclosing Party (as such term is defined below), or its affiliates (or

its or its affiliates' agents, servants, contractors, or employees) to the Receiving Party or its Representatives (as such terms are defined below) in connection with the Project and which, if in tangible form, is marked with the words "Confidential" or "Proprietary" or markings of similar import, or, if disclosed orally, is identified as confidential at the time of disclosure and in a written memorandum provided to Receiving Party by the Disclosing Party promptly following its disclosure; and (ii) memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements or any other thing prepared or derived by the Receiving Party or its Representatives from the information described herein. All Proprietary Information in tangible form of expression which has been delivered (or thereafter created by copy or reproduction pursuant to this Agreement) shall be and remain the property of the Party which is disclosing such Proprietary Information (the "Disclosing Party").

- 24.2 General Restrictions. Upon receiving Proprietary Information, such receiving Party (the "Receiving Party") and its Representative shall keep in strict confidence and not disclose to any person (with the Representatives of the Receiving Party, to the extent each such Representative has a need to know in connection herewith) any of the Disclosing Party's Proprietary Information except as otherwise provided by the terms and conditions of this Agreement. The Receiving Party and its Representatives shall not use such Proprietary Information except for the purposes identified herein without the prior written approval of the Disclosing Party. The Receiving Party shall be solely liable for any breach of this Section to the extent caused by its or its Representatives. For purposes of this Article, the term "Representative(s)" shall mean the affiliates of a Receiving Party and the officers, directors, employees, contractors, and representatives of such Receiving Party and of its affiliates.
- 24.3 Additional Marking Requirements. In the event either Party discloses its Proprietary Information to the other Party unmarked or in oral or visual form, the Disclosing Party shall notify the Receiving Party in writing that such Information is deemed proprietary within 48 hours of its disclosure. Such Proprietary Information shall be treated in the manner set forth above from the date such written notice is received.
- 24.4 Exceptions. The Receiving Party shall not be precluded from, nor liable for, disclosure or use of any Proprietary Information if:
- 24.4.1 The Proprietary Information is in or enters the public domain, other than by a breach of this Section; or
- 24.4.2 The Proprietary Information is known to the Receiving Party or its Representatives at the time of first disclosure hereunder, or thereafter becomes known to the Receiving Party or its Representatives prior to or subsequent to such disclosure without similar restrictions from a source other than the Disclosing Party, as evidenced by written records; or
- 24.4.3 The Proprietary Information is developed by the Receiving Party or its Representatives independently of any disclosure under this Agreement as evidenced by written records; or
- 24.4.4 The Proprietary Information is disclosed more than three (3) years after the Effective Date of ; or
- 24.4.5 The Disclosing Party consents to the disclosure or use of the Proprietary Information; or
- 24.4.6 The Receiving Party or its Representatives has a reasonable belief that disclosure of the Proprietary Information is necessary for public safety reasons and has attempted to provide as much advance notice of the disclosure to the Disclosing Party as is practicable under the circumstances.

Anything in this Article or the Agreement to the contrary notwithstanding, the Receiving Party or its Representative(s) may disclose Proprietary Information of the other Party to the extent the Receiving Party or its Representative(s) is required to do so by law, by a court or by other governmental or regulatory authorities; provided, however, that, if permitted to do so by applicable law, the Receiving Party shall give the Disclosing Party written notice of any such required disclosure prior to such disclosure being made so that the Disclosing Party may seek a protective order with respect to such Proprietary Information.

25.0 Rights of Various Interests

- 25.1 The Parties shall be responsible for promptly notifying each other in the event that it should become necessary to coordinate Work between the Parties and others.

26.0 Governing Law

- 26.1 The Agreement is made and shall be interpreted, construed, governed, and enforced in accordance with the laws of the State of New York, without reference to such State's conflict of laws doctrine.
- 26.2 The Company and CHURCHVILLE agree to submit to the personal jurisdiction of the New York courts, or the Federal District courts, as permitted by law, with respect to any matter or dispute arising out of the Agreement. All lawsuits filed to enforce any provisions of the Agreement or to litigate any claims arising in connection with the Agreement shall be filed in either Monroe County or the Western District of New York, if applicable.

27.0 Miscellaneous

- 27.1 **Project Managers.** Each Party shall designate a Project Manager. Whenever either Party is entitled to approve a matter, the Project Manager for the Party responsible for the matter shall notify the Project Manager of the other Party of the nature of such matter. The Project Managers shall discuss such matter, and each Project Manager shall confer on such matter on behalf of his/her company. The foregoing notwithstanding, in no event shall Project Managers be authorized to amend the provisions of this Agreement.
- 27.2 **Form and Address.** All notices, invoices and other communications from either Party to the other hereunder shall be in writing and shall be deemed received (i) upon actual receipt when personally delivered, (ii) upon acknowledgment of receipt if sent by facsimile, (iii) upon the expiration of the third business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier company, addressed to the other Party. Each Party may change its addresses by giving the other Party written notice thereof in conformity with this Section. Any payments made under this Agreement, if made by mail, shall be deemed to have been made on the date of receipt thereof.
- 27.3 **Exercise of Right.** No failure or delay on the part of either Party in exercising any right, power or privilege hereunder and no course of dealing between the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 27.4 **Additional Actions and Documents.** Each of the Parties hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver and file or cause to be executed, acknowledged, delivered and filed, such further documents and instruments, and to use its commercially reasonable efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether at or after the execution of this Agreement.

- 27.5 **Headings.** The descriptive headings of the several sections and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement. Such headings shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
- 27.6 **Incorporation of Schedules and Exhibits.** The schedules, attachments and exhibits referenced in and attached to this Agreement shall be deemed an integral part hereof to the same extent as if written in whole herein. In the event that any inconsistency exists between the provisions of this Agreement and any schedules or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.
- 27.7 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument. This Agreement may also be executed via counterpart facsimiles or in "PDF" format by electronic mail upon (a) the telecopy or emailing by each Party of a signed signature page thereof to the other Party, with, in the case of a facsimile, return receipt by telecopy requested and received and (b) the Parties' agreement that they will each concurrently post a fully executed original counterpart of the Agreement to the other Party.
- 27.8 **Prior Agreements; Modifications.** This Agreement and the schedules, attachments and exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous understandings, commitments or representations concerning the subject matter. Each Party acknowledges that the other Party has not made any representations other than those that are contained herein. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a writing signed by an authorized officer of the Party against whom the amendment, modification or waiver is sought to be enforced.
- 27.9 **Severability.** Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any law, such law shall prevail; provided, however, that in such event, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirement, and no other provisions of this Agreement shall be affected thereby and all such other provisions shall continue in full force and effect.
- 27.10 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.
- 27.11 **Validity; Regulatory Approvals** Each Party hereby represents that the provisions of this Agreement constitute valid and legally binding obligations of such Party and are enforceable in accordance with their terms .

The terms and conditions of this Agreement, and the obligations of each Party hereunder, are expressly contingent upon (i) each Party receiving all approvals, authorizations, consents, franchises, permits and licenses from any local, state, or federal regulatory agency or other governmental agency that may be required for such Party in connection with the performance of such Party's obligations under or in connection with this Agreement (the "Required Regulatory Approvals") and (ii) each Required Regulatory Approval being granted without the imposition of any modification or condition of the terms of this Agreement or the subject transactions, unless such modification(s) or condition(s) are agreed to by both Parties in their respective sole discretion. If any application is made in connection with seeking any Required Regulatory Approval and is denied, or is granted in a form, or subject to conditions, that either Party rejects, in its sole discretion, as unacceptable, this Agreement shall terminate as of the date that a Party notifies the other Party of such denial or rejection, in which event the obligations of the Parties under this Agreement shall cease as of such date and this Agreement shall terminate.

- 27.12 **Names and addresses for Notices, etc.** Except to the extent otherwise specified in this Agreement, all notices and other communications shall be provided to the following persons at the addresses listed below:

Name: Paul Robinson
Churchville,
Electric Superintendent

Address: Village of Churchville
23 E Buffalo Street PO Box 613
Churchville, NY 14428

Name: Sarah Steitz
Transmission Commercial Services
National Grid

Address: National Grid
300 Erie Blvd W
Syracuse, NY 13202

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective duly authorized representatives as of the date first written above.

THE VILLAGE OF CHURCHVILLE

By: Nancy L Steedman
Name: NANCY L. STEEDMAN
Title: MAYOR

NIAGARA MOHAWK POWER CORPORATION

By: Ellen Smith
Name: Ellen Smith
Title: COO

Schedule 1
INSURANCE REQUIREMENTS

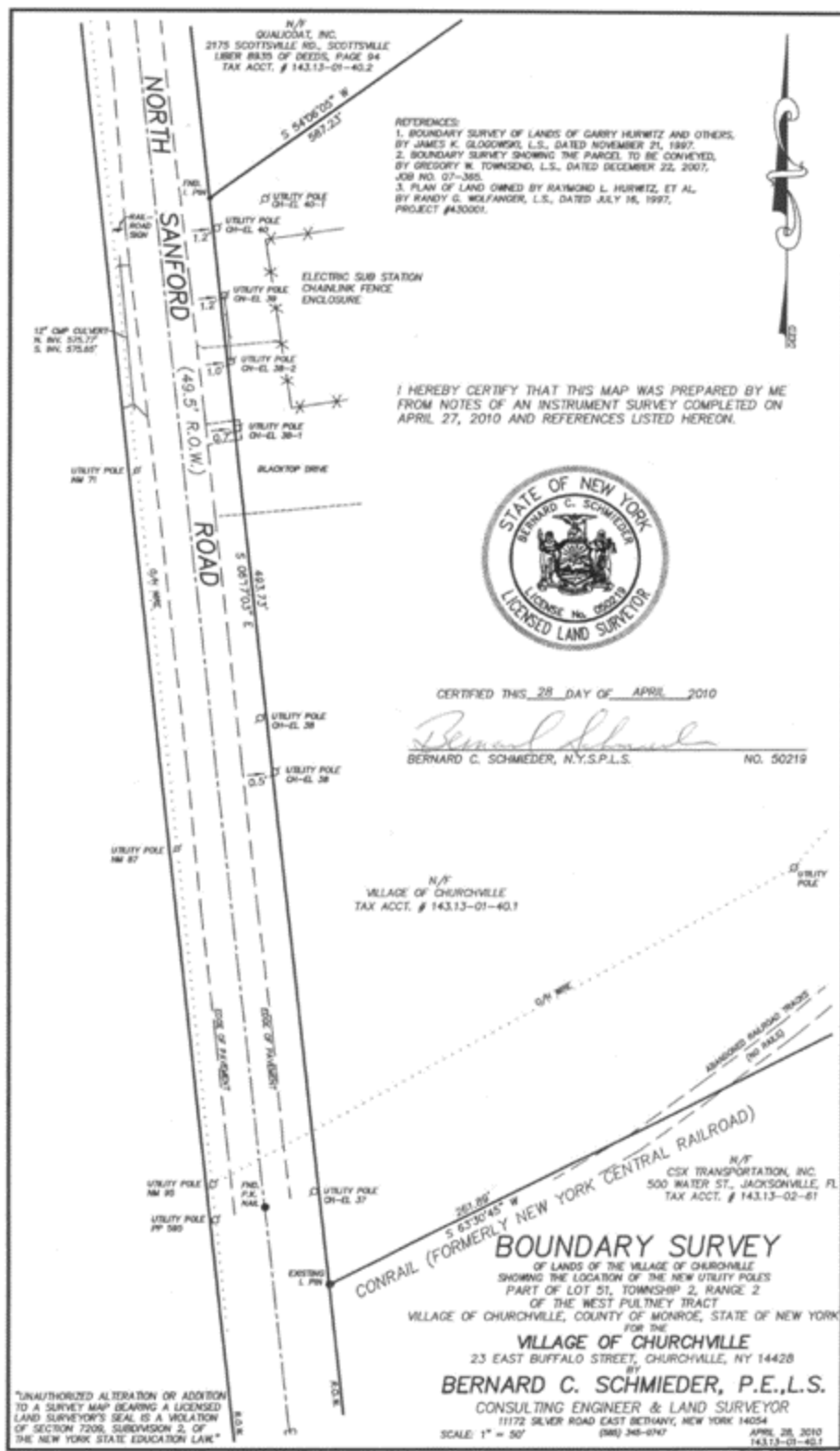
- Workers Compensation and Employers Liability Insurance as required by the State of New York. If required coverage shall include the U.S. Longshoremen's, and Harbor Workers Compensation Act & the Jones Act.
 - Public Liability (Including Contractual Liability), covering all activities and operations to be performed by it under this Agreement, with following minimum limits:
 - (A) Bodily Injury - \$1,000,000/\$1,000,000
Property Damage - \$1,000,000/\$1,000,000
OR
 - (B) Combined Single Limit - \$1,000,000
OR
 - (C) Bodily Injury and Property Damage per Occurrence - \$1,000,000
General Aggregate & Product Aggregate - \$2,000,000 each
 - Umbrella or Excess Liability, coverage with a minimum limit of \$ 4,000,000.
1. Upon request, either Party shall promptly provide the requesting Party with either evidence of insurance or certificates of insurance evidencing the insurance coverage above. CHURCHVILLE shall provide such certificates or evidence of insurance to National Grid at the following address:
- To: National Grid c/o Niagara Mohawk Power Corporation
Attention: Risk Management, Bldg. B-3
300 Erie Boulevard West
Syracuse, NY 13202
- National Grid shall provide such certificates or evidence of insurance to CHURCHVILLE at the following address:
- To: Paul Robinson or designee
Village of Churchville
23 E Buffalo Street PO Box 613
Churchville, NY 14428
2. Such certificates, and any renewals or extensions thereof, shall provide that at least thirty (30) days prior written notice shall be given to either party in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retention's which shall be for the account of the insured party.
3. If a party fails to secure or maintain any insurance coverage, or any insurance coverage is canceled before the completion of all services provided under this Agreement, and such party fails immediately to procure such insurance as specified herein, then the non-defaulting party has the right but not the obligation to procure such insurance and, at its option, either bill the cost thereof to the defaulting party or deduct the cost thereof from any sum due the defaulting party under this Agreement.
4. To the extent requested, both Parties shall furnish to each other with copies of any accidents report(s) sent to the a party's insurance carriers covering accidents or incidents occurring in connection with or as a result of the performance of the Work for the Project under this Agreement.
5. Each Party shall comply with any governmental and/or site specific insurance requirements even if not stated herein.

6. By the date that such coverage is required, each Party represents to the other that it will have full policy limits available and shall notify each other in writing when coverage's required herein have been reduced as a result of claim payments, expenses, or both.
7. CHURCHVILLE shall name the Company as an additional insured for all coverage's except Workers Compensation and Employers Liability Insurance in order to provide the Company with protection from liability arising out of activities of CHURCHVILLE relating to the Project and associated Work.

Attachment 1 to Construction Services Agreement



Attachment 2 to Construction Services



Attachment 3 to Construction Services Agreement

Attachment 4 to Construction Services Agreement