

COST REIMBURSEMENT AGREEMENT

THIS COST REIMBURSEMENT AGREEMENT (the "Agreement"), made and entered into as of this 22nd day of November 2011 (the "Effective Date"), by and between the Village of Solvay ("Customer"), a municipal electric corporation organized and existing under the laws of the State of New York, and Niagara Mohawk Power Corporation d/b/a National Grid (the "Company"), a corporation organized and existing under the laws of the State of New York. Customer and Company may be referred to hereunder, individually, as a "Party" or, collectively, as the "Parties".

WITNESSETH

WHEREAS, Customer is making modifications to its existing Mathews Avenue Substation facilities ("*Customer Facilities*" or "*Sites*"); and

WHEREAS, the Customer Facilities interconnect to the Company's Transmission System; and

WHEREAS, modifications to Customer Facilities will require modifications to the Company's Transmission System; and

WHEREAS, Customer and Company contemplate negotiation of a mutually acceptable Interconnection Agreement in connection with the Project (as such term is defined below) ("*Interconnection Agreement*"); and

WHEREAS, Customer desires to have Company perform certain engineering, design and procurement services in connection with the Project in advance of the negotiation and execution of the Interconnection Agreement and Company is willing to do so subject to the terms and conditions set forth below;

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

"Agreement" means this Cost Reimbursement Agreement including all annexes, appendices, attachments, schedules and exhibits and any subsequent amendments, supplements, or modifications thereto, as mutually agreed to and executed by the Parties.

“Company Reimbursable Costs” means the actual costs and expenses incurred by Company and/or its affiliates in connection with performance of the Work (as defined below) or otherwise incurred by Company in connection with the Project or this Agreement, and including, without limitation, any such costs that may have been incurred by Company prior to the Effective Date. These Company Reimbursable Costs shall include, without limitation, the actual expenses for labor (including, without limitation, internal labor), services, materials, subcontracts, equipment or other expenses incurred in the execution of the Work or otherwise in connection with the Project, all applicable overhead, all federal, state and local taxes incurred, any tax gross-up amounts (including, without limitation, those related to contributions-in-aid of construction), all costs of outside experts, consultants, counsel and contractors, all other third-party fees and costs, and all costs of obtaining any required consents, releases, approvals, or authorizations.

“Date of Completion” shall mean the date that the Work is completed.

“Day” means a calendar day, provided, that, if an obligation under this Agreement falls due on a Saturday, Sunday or legal holiday, the obligation shall be due the next business day worked.

“Dollars” and “\$” mean United States of America dollars.

“Environment” shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, and ambient air.

“Environmental Law” shall mean any environmental or health-and-safety-related law, regulation, rule, or ordinance, at the federal, state, or local level, whether existing as of the date hereof, previously enforced or subsequently enacted, or any judicial or administrative interpretation thereof.

“Estimated Cost of Work” shall have the meaning set forth in Schedule A attached hereto.

“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 refer to 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, and 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 Customer, the term Good

Utility Practice shall include standards applicable to a utility generator connecting to the distribution or transmission facilities or system of another utility.

"Hazardous Substances" means any pollutant, contaminant, toxic substance, hazardous material, hazardous waste, or hazardous substance, or any oil, petroleum, or petroleum product, as defined in or pursuant to the Federal Clean Water Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq., or any other Environmental Law.

"Initial Prepayment" shall have the meaning specified in Section 7.1 of this Agreement.

"Interconnection Agreement Effective Date" shall mean the date on which the Interconnection Agreement becomes effective (as defined in the Interconnection Agreement or, if applicable, the date upon which the Federal Energy Regulatory Commission ("*FERC*") permits the Interconnection Agreement to go into effect.)

"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" shall mean the New York Independent System Operator, Inc.

"NYSRC" shall mean the New York State Reliability Council.

"Project Manager" means the respective representative of Customer and the Company appointed pursuant to Section 27.1 of this Agreement.

"Project" means the Work to be performed under this Agreement by the Company.

"Release" shall mean any releasing, spilling, leaking, contaminating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Hazardous Substances into the Environment.

"Sites" means the locations where the Work is being conducted.

"Subcontractor" means any organization, firm or individual, regardless of tier, which Company retains 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.

"Threat of Release" shall mean a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that may result from such Release.

"Work" shall have the meaning specified in Section 3.1 of this Agreement.

2.0 Term

- 2.1 This Agreement shall become effective as of the Effective Date and shall remain in full force and effect until (i) the Interconnection Agreement Effective Date or (ii) performance has been completed hereunder and final payment is made as contemplated by this Agreement, whichever occurs earlier.
- 2.2 If this Agreement is terminated pursuant to Section 2.1(i), except as otherwise specifically provided in this Agreement, any and all rights, obligations and remedies the Parties have under this Agreement shall terminate and be of no further force or effect immediately, and the terms and conditions of the Interconnection Agreement shall govern the Parties' rights, obligations, and remedies relating to the subject matter hereof (including, without limitation, the Work).

3.0 Scope of Work

- 3.1 The scope of work is set forth in Schedule A of this Agreement, attached hereto and incorporated herein by reference (the "Work").
- 3.2 Company shall use commercially reasonable efforts to perform the Work in a manner consistent with Good Utility Practice; provided, however, that Company shall have no responsibility or liability in connection with (i) any items or services provided by Customer or its third party contractors or representatives whether or not such items or services are incorporated in the Work, (ii) any materials, equipment, goods, items or services provided, manufactured, or licensed by third parties (excluding third party Subcontractors retained by Company to perform any portion of the Work) whether or not such materials, equipment, goods, items or services are incorporated in the Work or (iii) any defects in Work that result from the acts or omissions of persons other than Company or its third party Subcontractors or accidents or circumstances not caused by Company or its third party Subcontractors.

Prior to completion of the Work and for one (1) year following the Date of Completion, Customer shall have the right to notify the Company of the need for correction of defective Work that does not meet the standards of this Section 3.2 (“Defective Work”); any such notice shall be in writing and shall describe the claimed defect in reasonable detail. If the Work is defective within the meaning of the prior sentence, the Company shall promptly complete, correct, repair or replace the Defective Work, as appropriate, at no added cost to the Customer. The Company shall have no obligation to complete, correct, repair or replace any Defective Work after the expiration of one (1) year from the Date of Completion. The remedy set forth in this Section is the sole and exclusive remedy granted to Customer for any failure of Company to meet the performance standards or requirements set forth in this Agreement.

4.0 Changes in the Work

- 4.1 Each Party shall inform the other at the start of Work in writing of the name and contact information for the respective Project Manager per Section 27.1 of this Agreement;
- 4.2 If Customer requests a change in the Work, such request shall be submitted to the Company in writing. If the Parties agree to a change in the Work, such agreed change will be set forth in writing, and the Work schedule shall be adjusted and/or extended as mutually agreed by the Parties. Any additional costs arising from such change shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.2 of this Agreement.
- 4.3 Notwithstanding the above, Company may make any reasonable changes in the Work to ensure the completion of the Project, prevent delays in the schedule, or meet the requirements of governmental authorities, laws, regulations, ordinances, Good Utility Practice and/or codes. Company shall provide Customer with notice of the changes to the Work within fifteen (15) business days of such changes being implemented. The Work schedule shall be adjusted accordingly and any additional costs shall be paid by the Customer as part of Company Reimbursable Costs when invoiced by the Company in accordance with Section 7.2 of this Agreement.

5.0 Performance and Schedule

- 5.1 The Company shall use commercially-reasonable efforts to attempt to have Work performed by its direct employees during normal working hours. The foregoing notwithstanding, if Work is performed outside of normal working hours, Customer shall be responsible for paying all actual costs incurred in connection therewith, including, without limitation, applicable overtime costs.

- 5.2 If Customer requests, and the Company agrees, to work outside normal working hours due to delays in the Project schedule or for other reasons, Company shall be entitled to recover all resulting costs as part of Company Reimbursable Costs.
- 5.3 The Projected Project Milestone Schedule is set forth in Schedule B, attached hereto and incorporated herein by reference. The Projected Project Milestone Schedule is an estimate only and subject to change. The Company shall not be held to the Projected Project Milestone.

6.0 **Estimate Only; Customer Obligation to Pay Company Reimbursable Costs.**

- 6.1 The Estimated Cost of Work (as defined in Schedule A) is an estimate only. Customer shall pay all Company Reimbursable Costs actually incurred by Company.

7.0 **Payment**

- 7.1 Within thirty (30) Days following the Effective Date, the Company shall invoice Customer for an initial prepayment of **One Hundred Thousand Dollars** (\$100,000) ("*Initial Prepayment*") and Customer shall pay the Initial Prepayment to Company within five (5) Days of the invoice due date. Company shall not commence Work under this Agreement prior to receiving the Initial Prepayment.
- 7.2 Company may periodically invoice Customer for Company Reimbursable Costs incurred. Company is not required to issue periodic invoices to Customer and may elect, in its sole discretion, to continue performance hereunder after the depletion of the Initial Prepayment and invoice Customer at a later date. Except as otherwise expressly provided for in this Agreement, all invoices shall be due and payable thirty (30) Days from date of invoice. If any payment due under this Agreement is not received within five (5) days of the applicable invoice due date, the Customer shall pay to the Company interest on the unpaid amount at an annual rate equal to two percent (2%) above the prime rate of interest from time to time published under "Money Rates" in The Wall Street Journal (or if at the time of determination thereof, such rate is not being published in The Wall Street Journal, such comparable rate from a federally insured bank in New York, New York as the Company may reasonably determine), the rate to be calculated daily from and including the due date until payment is made in full. In addition to any other rights and remedies available to Company, if any payment due from Customer under this Agreement is not received within five (5) Days of the applicable invoice due date,

Company may suspend any or all Work pending receipt of all amounts due from Customer.

- 7.3 Company's invoices to Customer for all sums owed under this Agreement shall be sent to the individual and address specified below, or to such other individual and address as Customer may designate upon written notice to the Company :

Name: Village of Solvay
Address: 1100 Woods Rd.
Solvay, NY 13209
Attn: John Montone

- 7.4 Payments to the Company shall be made by check or wire transfer; wire transfer payments shall be made to:

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

8.0 **Final Payment**

- 8.1 Following completion of the Work or termination of the Agreement pursuant to Section 2.1(i), whichever occurs earlier, the Company shall perform an overall reconciliation of the total of all Company Reimbursable Costs to the invoiced costs previously paid to Company by Customer under this Agreement ("Total Payments Made"). If the total of all Company Reimbursable Costs is greater than the Total Payments Made, the Company shall provide a final invoice to Customer for the balance due to the Company under this Agreement (the "Balance Amount"). If the Total Payments Made is greater than the total of all Company Reimbursable Costs, Company shall reimburse the difference to Customer ("Reimbursement Amount"). The Reimbursement Amount or Balance Amount, as applicable, shall be due and payable upon final reconciliation but no later than sixty (60) Days after such reconciliation. Any portion of the Balance Amount or Reimbursement Amount, as applicable, remaining unpaid after that time shall be subject to interest as calculated pursuant Section 7.2 of this Agreement. Notwithstanding Article 2.2 or any other provision of this Agreement, this Section 8.1 shall survive the termination of this Agreement if the Agreement is terminated pursuant to Section 2.1(i).

9.0 **Customer's Responsibilities**

- 9.1 The Customer's responsibilities are set forth in Schedule C of this Agreement, attached hereto and incorporated herein by reference.

- 9.2 Customer shall reasonably cooperate with Company as required to facilitate Company's performance of the Work.
- 9.3 Company shall have no responsibility or liability under this Agreement for any delay in performance, defective performance or nonperformance to the extent such delay in performance, defective performance or nonperformance is caused by the inability or failure of (a) Customer to cooperate or to perform any tasks or responsibilities contemplated to be performed or undertaken by the Customer in Schedule C or elsewhere in this Agreement or (b) Customer and Company to reach agreement on any matter requiring their mutual agreement under the terms of this Agreement.

10.0 **Meetings**

- 10.1 Each Party's Project Manager shall attend Project meetings at times and places mutually agreed to by the Parties.

11.0 **Disclaimers**

- 11.1 THE COMPANY IS NOT IN THE BUSINESS OF PERFORMING DESIGN OR CONSTRUCTION SERVICES FOR PROFIT AND IS NOT RECEIVING ANY FEE OR PROFIT (AS CONTRASTED WITH COST REIMBURSEMENT) FOR ITS PERFORMANCE OF THE WORK HEREUNDER. THE EXCLUSIVE REMEDY GRANTED TO CUSTOMER FOR ANY ALLEGED FAILURE OF COMPANY TO MEET THE PERFORMANCE STANDARDS OR REQUIREMENTS SET FORTH HEREIN IS AS SET FORTH IN SECTION 3.2. 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. CUSTOMER 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.

11.2 Notwithstanding any other provision of this Agreement, this Article shall survive the termination or expiration of this Agreement.

12.0 **Liability and Indemnification**

- 12.1 To the fullest extent permitted by applicable law, Customer shall indemnify and hold harmless, and at Company's option, defend Company, its parents and affiliates and their respective contractors, officers, directors, servants, agents, representatives, and employees (each, individually, an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all liabilities, damages, losses, costs, expenses (including, without limitation, any and all reasonable attorneys' fees and disbursements), causes of action, suits, liens, claims, damages, penalties, obligations, demands or judgments of any nature, including, without limitation, for death, personal injury and property damage, liability for any and all federal, state or local taxes, economic damage, and claims brought by third parties for personal injury and/or property damage (collectively, "Damages"), incurred by any Indemnified Party to the extent caused by (i) any breach of this Agreement by Customer, its parents or affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, or employees, or (ii) the negligence, unlawful act or omission, or intentional misconduct of Customer, its parents or affiliates, third-party contractors, or their respective officers, directors, servants, agents, representatives, and employees, arising out of or in connection with this Agreement, the Project, or any Work, except to the extent such Damages are directly caused by the gross negligence, intentional misconduct or unlawful act of the Company or any person or entity for whom Company is legally responsible.
- 12.2 The Company's total cumulative liability to Customer for all claims of any kind, whether based upon contract, tort (including negligence and strict liability), or otherwise, for any loss, injury, or damage connected with, or resulting from, this Agreement or the Work, shall not exceed the aggregate amount of all payments made to Company by Customer under this Agreement.
- 12.3 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 this 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 (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.

- 12.4 Neither Party shall be liable to the other Party for claims of lost profits, delays, loss of use, business interruption, or claims of customers, whether such claims are categorized as direct or consequential damages, or whatever the theory of recovery, and whether or not (i) such damages were reasonably foreseeable or (ii) the Parties were advised or aware that such damages might be incurred.
- 12.5 Anything in this Agreement to the contrary notwithstanding, neither Party shall be responsible for any failure or inability to perform hereunder to the extent such failure or inability is caused by the acts or omissions of the other Party (including any contractor of such Party or any person or entity for whom such Party is legally responsible) or any third party.
- 12.6 Notwithstanding any other provision of this Agreement, this Article shall survive the termination or expiration of the Agreement.

13.0 **Employee Claims; Insurance**

- 13.1 The Company elects to self-insure to maintain the insurance coverage amounts set forth in Schedule D of this Agreement.
- 13.2 Prior to commencing Work on the Project and during the term of the Agreement, the Customer, at its own cost and expense, shall procure and maintain insurance in form and amounts set forth in Schedule D of this Agreement, or shall, at the Customer's sole and absolute discretion, elect to self-insure provided that the Customer provides written notice to the Company prior to commencing any Work under this Agreement.
- 13.3 Prior to commencing the Work, the Customer, provided that the Customer does not elect to self insure, shall have its insurer, if any, furnish to the Company 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.
- 13.4 Each Party shall be separately responsible for insuring its own property and operations.

14.0 **Assignment and Subcontracting**

14.1 Neither party may assign this Agreement or any part thereof, provided, however, that Company may assign this Agreement or any part thereof to any affiliated entity controlling, controlled by, or under common control with, the Company without Customer's written consent; any such assignee shall be bound by the terms and conditions of this Agreement. The foregoing shall not be deemed to prevent Customer from retaining qualified subcontractors to perform any work Customer is required to perform in connection with this Agreement, provided, that, Customer shall be responsible to ensure that each such subcontractor complies with all applicable terms and conditions of this Agreement. For the avoidance of doubt: Customer may not transfer or delegate any of its payment obligations under this Agreement, in whole or in part. 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 this Agreement in violation of the foregoing shall be voidable at the option of the non-assigning Party.

15.0 **Independent Contractor**

15.1 Company and Customer shall be independent contractors, and neither Party shall be deemed to be an agent of the other Party.

16.0 **Examination, Inspection and Witnessing**

16.1 Subject to Customer's and its representatives' compliance with Company's security and other access requirements, the Customer and/or its representatives shall have the right to inspect and examine the Work, from time to time, at Customer's sole cost and expense, with reasonable prior notice to Company. Unless otherwise agreed between the Parties, such inspections, examinations and tests shall be scheduled during normal business hours.

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

16.3 At times and places mutually agreed to by the Parties, Customer and Company, or their respective designated representatives, shall be entitled to witness any test contemplated by this Agreement.

17.0 **Safety**

- 17.1 Each Party shall be responsible for the safety and supervision of its respective employees involved with the Work or on the Sites. In connection with 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.

18.0 Approvals, Permits and Easements

- 18.1 The actual cost of obtaining all permits, licenses, permissions, or consents obtained by Company necessary for the Project and the Work shall be paid for by Customer as part of Company Reimbursable Costs.

19.0 Environmental Protection; Hazardous Substances or Conditions

- 19.1 The Company shall in no event be liable to Customer, 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 Substances which may be present at or on any Customer or third party owned, occupied, used, or operated property or facility (including, without limitation, easements, rights-of-way, or other third-party property) or which the Company, its affiliates or contractors, their respective officers, directors, employees, agents, servants, or representatives may discover, release, or generate at or on such properties or facilities through no negligent or unlawful act of the Company. Customer agrees to hold harmless, defend, and indemnify the Company, its affiliates and contractors, 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) the presence, discovery, release, threat of release or generation of Hazardous Substances, 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 presence, discovery, release, threat of release, generation or breach is or are directly and solely caused by the negligent or unlawful act of the Company or of any person or entity for whom the Company is legally responsible. The obligations under this Section shall not be limited in any way by any limitation on Customer's insurance or by any limitation of liability or disclaimer provisions contained in this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

19.2 Customer shall promptly inform the Company, in writing, of any Hazardous Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, whether above-ground or underground, that are present on, under, over, or in Customer 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 the Project. Prior to commencement of the Work, Customer 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 Substances, or unsafe, dangerous, or potentially dangerous, conditions or structures, and to promptly, fully, and in writing, communicate the results thereof to the Company. Customer's provision to the Company of the information contemplated in this Section shall in no event give rise to any liability or obligation on the part of the Company, nor shall Customer's obligations under this Agreement, or under law, be decreased or diminished thereby.

20.0 **Suspension of Work**

20.1 Subject to Section 20.2, below, Customer may interrupt, suspend, or delay the Project upon written notice to the Company specifying the nature and expected duration of the interruption, suspension, or delay. Customer shall be responsible to pay Company for all costs incurred by Company that arise as a result of such interruption, suspension or delay.

20.2 As a precondition to the Company resuming the Work following a suspension under Section 20.1, the estimated schedule shall be revised as mutually agreed by the Parties to reflect the interruption, suspension, or delay. Adjustments to the Company Reimbursable Costs shall reflect any costs or expenses the Company incurs as a result of the interruption, suspension, or delay.

21.0 **Right to Terminate Agreement**

21.1 Notwithstanding any other provision of this Agreement, if either Party (a) fails to comply with any of the material terms or conditions of the Agreement; (b) sells or transfers all or substantially all of its assets; (c) enters into any voluntary or involuntary bankruptcy proceeding or receivership; or (d) 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 prior notice to the other Party and a reasonable opportunity for cure (not to exceed thirty (30) days in the case of a failure to pay amounts when due), to terminate this Agreement, in whole or in part, and thereupon each Party shall immediately discontinue its performance hereunder to the extent feasible and make every reasonable effort to procure cancellation of existing commitments, orders and contracts upon terms that are reasonably expected to minimize all associated costs. However, nothing herein will restrict Company's ability to

complete aspects of the Work that Company must reasonably complete in order to return its facilities and the Sites to a configuration in compliance with Good Utility Practice and all applicable laws, codes, regulations and standards.

21.2 If the event of any early termination or cancellation of the Work as contemplated in this Agreement, Customer shall pay Company the Company Reimbursable Costs for:

- a. all Work completed on or before the effective date of termination or cancellation;
- b. other costs reasonably incurred by Company in connection with the Work prior to Company's receipt of the termination or cancellation notice for materials, equipment, tools, construction equipment and machinery, engineering and other items, materials, assets or services which cannot reasonably be avoided, mitigated or cancelled;
- c. costs reasonably incurred to unwind Work performed prior to Company's receipt of the termination or cancellation notice to the extent reasonably necessary to return Company's facilities and the Sites to a configuration in compliance with Good Utility Practice and all applicable laws, codes, regulations and standards, including, without limitation, applicable NERC and NPCC protection; and
- d. reasonable demobilization expenses incurred by Company which cannot be reasonably avoided or mitigated.

22.0 **Delays; Unforeseen Difficulties**

22.1 Customer agrees that any delays or failure of performance by Company shall not constitute a default and shall be excused hereunder, if and to the extent such delays or failures of performance are caused in whole or part, by (i) any delays caused by Customer or any of Customer's third party contractors, including, without limitation, any delays arising from such party's failure to perform work or tasks necessary for Company to perform Work, (ii) any failure or refusal by Customer or any of Customer's third party Subcontractors to fully and timely cooperate with the Company or its subcontractors (including, without limitation, granting access, consents and permissions as and when required for Company to perform any part of the Work hereunder) or (iii) any unforeseen conditions or occurrences beyond the reasonable control of the Company (including, without limitation, conditions of or at the Site, delays in shipments of materials and equipment and the unavailability of materials). The price and time for performance under this Agreement shall be adjusted accordingly.

23.0 **Force Majeure**

23.1 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 in connection with the Work or Project, 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 or other similar contingency, 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 termination, Customer shall pay the Company all of the Company’s Company Reimbursable Costs incurred up to the effective date of such termination.

23.2 Within thirty (30) 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.

24.0 **Extensions of Time**

24.1 Company may reasonably request an extension to the schedule for changes in the Project, as contemplated by Article 4.0, and for events of Force Majeure, as provided in Article 23.0.

25.0 **Proprietary and Confidential Information**

25.1 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 or the Work and that is described or identified (at the time of disclosure) as being non-public, confidential or proprietary, or the non-public or proprietary nature of which is apparent from the context of the disclosure or the contents or nature of the information disclosed; (ii) any market sensitive information (including, without limitation, outages scheduled on generators or transmission lines of any Party or any third party) and (iii) 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 in (i) or (ii) preceding. 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").

- 25.2 General Restrictions. Upon receiving Proprietary Information, the receiving Party (the "Receiving Party") and its Representative shall keep in strict confidence and not disclose to any person (with the exception of 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 Representatives. For purposes of this Section, the term "Representative(s)" shall mean the affiliates of the Receiving Party and the officers, directors, employees, contractors, and representatives of such Receiving Party and of its affiliates. Customer agrees that any Proprietary Information will be used solely for the Project and will not be used, either directly or indirectly, for the Customer's financial gain and/or commercial advantage or in violation of any applicable laws, rules or regulations.
- 25.3 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 forty-eight (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.
- 25.4 Exceptions. The Receiving Party shall not be precluded from, nor liable for, disclosure or use of any Proprietary Information if:
- 25.4.1 the Proprietary Information is in or enters the public domain, other than by a breach of this Section; or

- 25.4.2 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
- 25.4.3 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
- 25.4.4 the Proprietary Information is disclosed more than three (3) years after first receipt of the disclosed Proprietary Information, or three (3) years after the termination or expiration of this Agreement, whichever occurs later ; or
- 25.4.5 the Disclosing Party consents to the disclosure or use of the Proprietary Information; or
- 25.4.6 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 Section 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. Receiving Party will reasonably cooperate with the Disclosing Party to obtain such protective order.

26.0 **Governing Law**

- 26.1 This 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 Customer agree to submit to the personal jurisdiction of the courts in the State of New York, or the Federal District courts in the State of New York, as permitted by law, with respect to any matter or dispute arising out of this Agreement.

27.0 **Miscellaneous**

27.1 **Project Managers.** Promptly following the Effective Date, each Party shall designate a Project Manager and shall provide the other Party with a written notice containing the name and contact information of its 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 Party. The foregoing notwithstanding, in no event shall Project Managers be authorized to amend or modify the provisions of this Agreement.

27.2 **Dispute Resolution.** Any dispute arising under this Agreement shall be the subject of good-faith negotiations between the Parties. Each Party shall designate one or more representatives with the authority to negotiate the matter in dispute for the purpose of participating in such negotiations. Unless a Party identifies exigent circumstances reasonably requiring expedited resolution of the dispute by a court or agency with jurisdiction over the dispute, any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than sixty (60) days may be submitted by either Party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any dispute arising under this Agreement may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the agreement of both Parties to participate in such an alternative dispute resolution process. During the pendency of any dispute, the Parties will continue to execute their obligations under the Agreement, except for disputed portions thereof, unless otherwise mutually agreed in writing.

27.3 **Compliance with Law.** Each Party shall comply, at all times, with, and procure the compliance, at all times, by all of its subcontractors with, all applicable federal, state, and local laws, rules, codes, regulations, and ordinances in connection with this Agreement and performance of the Work hereunder. Such compliance shall include, among other things, compliance with all applicable wage and hour laws and regulations and all other laws and regulations dealing with or relating to the employment of persons, and the payment of contributions, premiums, and taxes required by such laws and regulations.

- 27.4 **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 (3rd) business Day after being deposited in the United States mails, postage prepaid, certified or registered mail, or (iv) upon the expiration of one (1) business Day after being deposited during the regular business hours for next-day delivery and prepaid for overnight delivery with a national overnight courier, addressed to the other Party. Each Party may change its address by giving the other Party 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.
- 27.5 **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.
- 27.6 **Additional Actions and Documents.** Each Party 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.
- 27.7 **Headings.** The descriptive headings of the several Articles, 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.
- 27.8 **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, attachments or exhibits attached hereto, the provisions of this Agreement shall supersede the provisions of any such schedules, attachments or exhibits.

- 27.9 **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 facsimile, return receipt requested and received and (b) the Parties’ agreement that they will each concurrently post a fully executed original counterpart of this Agreement to the other Party.
- 27.10 **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.
- 27.11 **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.
- 27.12 **Nouns and Pronouns.** Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms, and the singular forms of nouns and pronouns shall include the plural, and vice versa.
- 27.13 **No Third Party Beneficiaries.** Nothing in this Agreement is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.
- 27.14 **Validity; Required 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 obligations of each Party under this Agreement 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, subject to Customer's obligation to pay Company for all Company Reimbursable Costs incurred through the effective termination date. All of the Company's actual costs for obtaining Required Regulatory Approvals shall be included within the meaning of the term Company Reimbursable Costs and shall be paid for by Customer.

- 27.15 **Notices** All formal notices, demands, or communications under this Agreement shall be submitted in writing either by hand, registered or certified mail, or recognized overnight mail carrier to:

To Customer : Mr. John Montone
 Village of Solvay
 1100 Woods Road
 Solvay, NY 13209
 (315) 468-6229

To Company: Mr. William Malee
 Director, Transmission Commercial
 40 Sylvan Road
 Waltham, MA 02451
 (781) 907-2422

[Signatures are on following page.]

ORIGINAL

IN WITNESS WHEREOF, each Party has executed this Agreement by its duly authorized representative as of the Effective Date.

VILLAGE OF SOLVAY, NEW YORK

By: Kathleen L. Mainelli
Name:
Title: Mayor

NIAGARA MOHAWK POWER CORPORATION d/b/a National Grid

By: William Malee
Name: William Malee
Title: Authorized Representative

Schedule A: Scope of Work

- 1.1 The work to be performed by the Company shall consist of the following :
 - 1.1.1 Engineering, including review of all relevant Customer drawings and specifications, design and procurement required for construction of a new tap point at the Customer's Mathews Avenue Substation to circuit #12.
 - 1.1.2 Engineering review and procurement required for reconnection of existing tap point to Customer's Mathews Avenue Substation on circuit #8
- 1.2 The Company shall not perform any construction or installation services in connection with the Project under this Agreement.
- 1.3 For the scope of Work, the estimated cost is \$100,000 (the "Estimated Cost of Work"). This estimated cost includes applicable taxes and will be re-evaluated once Customer's tax applicability status is confirmed. The Estimated Cost of Work is subject to change.

Schedule B: Project Milestone Schedule

MILESTONE SCHEDULE

Task	Milestone	Date	Responsible Party
1.	Execute Engineering and Procurement Agreement	November 2011	Customer/Company
2.	Submit initial prepayment	November 2011	Customer
3.	Start Engineering and Procurement	November 2011	Company
4.	Complete Engineering and Procurement	February 2012	Company

The dates above represent the Parties preliminary schedule, which is subject to adjustment, alteration, and extension in accordance with the terms of this Agreement.

Schedule C: Customer's Responsibilities

Customer shall provide:

1. If and to the extent applicable or under the control of the Customer, complete and accurate information regarding requirements for Services, including, without limitation, constraints, space, requirements, underground or hidden facilities and structures, and all applicable drawings and specifications; and
2. Other responsibilities and access deemed necessary by Company to facilitate performance of Services.

[Schedule D: 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, 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. Customer shall provide such certificates or evidence of insurance to Company at the following address:
- To: National Grid c/o NIAGARA MOHAWK POWER CORPORATION
Attention: Risk Management, A-4
300 Erie Boulevard West
Syracuse, NY 13202
- Company shall provide such certificates or evidence of insurance to Customer at the following address:
- To: Village of Solvay
1100 Woods Rd.
Solvay, NY 13209
Attn: John Montone
2. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
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. Customer 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 Customer relating to the Project and associated Work.