

CONFIDENTIALITY AND ASSURANCE AGREEMENT

This Agreement is entered into this__day of October, 2017 by and between New York State Electric and Gas Corporation, a corporation organized and existing under the laws of the State of New York (hereinafter "NYSEG" or "Company") and the Town of Ulysses , a municipality organized and existing under the laws of the State of New York (hereinafter "Town").

WITNESSETH

WHEREAS, COMPANY and TOWN (individually a "Party" and jointly, the "Parties") desire to enter into certain discussions which are likely to lead to the disclosure of information which is confidential, proprietary and/or commercially sensitive (hereinafter "Information"); and

WHEREAS, COMPANY and TOWN desire to reach an understanding with respect to the disclosure of such Information;

Based on the forgoing, COMPANY and TOWN agree as follows:

1. The Parties agree that the Information shall consist of oral and written communications between the Parties, identified or expressly designated as "Confidential", which pertain to the transactions contemplated hereunder. Such Information is proprietary and the property of the disclosing Party. The Party receiving such Information shall keep secret such Information using the same degree of care the receiving Party uses in protecting its own proprietary information of a like kind. Such Information shall not be sold, traded, published or otherwise disclosed by the receiving Party to anyone in any manner whatsoever, or photocopied or reproduced in any way, without the prior written consent of the disclosing Party, except as provided herein.
2. The disclosing Party agrees to coordinate and control the disclosure with the receiving Party's representative and to mark Information with the disclosing Party's restrictive legend. If Information is not marked with this legend or is disclosed orally, the disclosing Party agrees to identify Information as confidential at the time of disclosure, and to provide the receiving Party with written confirmation within five (5) business days.
3. Each Party shall have sole reasonable discretion as to what Information will be disclosed to the other Party. This Agreement shall not obligate either Party to disclose any Information to the other Party. Each Party acknowledges the proprietary rights of the other Party in and to the Information.
4. Information may be in the form of documents, magnetic tape, computer disks, or any other form. Information furnished by the disclosing Party shall be used exclusively by the receiving Party in connection with the request for acquisition of various street lights in the Village of Town (the "Acquisition").
5. Subject to paragraph 11, each Party may disclose, discuss or use Information only with those

employees, attorneys or consultants who are directly involved in planning the infrastructure needs of the Acquisition. The receiving Party shall not use the Information for any other purpose or publish, disclose, or otherwise divulge the Information to any person at any time without the prior written consent of an officer of the disclosing Party, except as expressly provided herein. In the event the Information is the subject of a Freedom of Information Law request, the receiving Party shall consult with the disclosing Party, however, the Party subject to the Freedom of Information Law request shall have the final determination of disclosure under the Freedom of Information Law.

6. If required by an order of a court of law, governmental or judicial body, each receiving Party may release to such body Information required by such order, provided that it shall use its best efforts to cause that body to treat such Information in a confidential manner and prevent such Information from becoming part of the public domain. Upon receiving a request for any Information from any court of law, governmental or judicial body, or from any party in any action or proceeding pending before any court of law, governmental or judicial body, each Party shall provide the other Party with notice of said request for Information as soon as reasonably practicable. Each Party shall reasonably cooperate with the other Party in exercising any applicable rights to oppose the disclosure of Information in any such action or proceeding before any such body.

7. Each receiving Party shall, within one (1) month after receiving written notice from the other Party requesting the return of the Information: (a) return to the other Party all Information, including copies made of such Information; and (b) cause to be destroyed all work papers, reports, or other information, in whatever form, including but not limited to documents, magnetic tape, or any other medium, which use or incorporate in any manner whatsoever the Information; however, each Party shall not destroy any Information in violation of any NYS statute, including but not limited to, Arts & Cultural Affairs Law §57-A (The Local Government Records Law).

8. Each Party shall employ procedures to prevent the unauthorized disclosure or use of the Information disclosed hereunder. These procedures shall include those described in paragraph 11 and shall be no less restrictive than the procedures used by each Party to protect its own Information.

9. The provisions of paragraphs 2-8 shall not apply to any Information: (a) which was in the public domain at the time of disclosure hereunder; (b) which thereafter passes into the public domain by acts other than the acts of or caused by the Party receiving said Information; (c) which is disclosed to the receiving Party by a third party, provided that the receiving Party does not know (or has no reasonable basis to know) that the information was received or disclosed unlawfully; (d) which the disclosing Party authorizes disclosure of in writing; or (e) which the receiving Party already possesses.

10. The burden of demonstrating that any Information was in fact disclosed in violation of this Agreement and the date of such disclosure shall rest with the Party asserting a breach of this Agreement. The burden of demonstrating the applicability of any of the exceptions to the confidentiality requirements of this Agreement shall rest with the Party claiming that such exception applies.

11. Each person who will review or discuss the Information on behalf of the receiving Party, other than those individuals designated in paragraph 1 above, shall, prior to such review or discussion, execute an agreement in the form attached hereto as Appendix A and promptly return the signed agreement to the other Party pursuant to paragraph 12. After complying with the provisions of paragraph 7 concerning the return and destruction of Information, the Party so returning and/or destroying Information shall provide the other Party with a verification duly signed by one of its officers in the form attached hereto as Appendix B.

12. Notices to be given pursuant to this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested to NYSEG, addressed as follows:

Attn: Ron E. Foster
Manager – Marketing & Sales NYSEG/RGE
P.O. Box 136
18 Link Drive
Binghamton, NY 13902-5224

Or to the TOWN OF ULYSSES, addressed as follows:

Attn: Elizabeth Thomas – Town Supervisor
Town of Ulysses
10 Elm Street
Trumansburg, New York 14886

13. This Agreement shall be governed by and construed in accordance with the law of the State of New York. For purposes of conflicts of laws issues, this Agreement was negotiated, made, and executed in the State of New York. With respect to any disputes regarding the interpretation or enforcement of, or performance under, this Agreement, each Party consents to the exclusive jurisdiction of the federal and state courts of the State of New York.

14. Each Party agrees that remedies at law may be inadequate to protect the disclosing Party in the event of a breach of this Agreement, and the receiving Party hereby, in advance, agrees to the granting of temporary injunctive relief in favor of the disclosing Party pending the judicial resolution of the issue to prevent the continuation of any such breach without proof of actual damages.

15. This Agreement shall continue for thirty six (36) months from the date of this Agreement, which date shall be the date first-above written on the first page of this Agreement, and may be terminated by either Party upon thirty (30) days' prior written notice to the other. The obligations hereunder shall terminate at the earlier of the expiration of six (6) years from the date of this Agreement or three (3) years from the date of an earlier termination by either Party.

If the foregoing conforms to our agreement, please have a duly authorized representative of TOWN sign below. Upon receipt by COMPANY of an original signed copy of this Agreement, this shall constitute an enforceable contract between the TOWN and COMPANY.

Sincerely,



Tad Palmer
Key Account Management

Agreed this ___ day of October, 2017

Town of Ulysses

By: _____

Name: _____

Title: _____

APPENDIX B

VERIFICATION

Pursuant to the Confidentiality and Assurances Agreement, dated as of the ____ day of October, 2017, between New York State Electric & Gas Corporation (“NYSEG” or “COMPANY”) and Town of Ulysses (TOWN) each Party provided to the other Information, as defined in the Agreement, on a confidential basis. The Agreement requires the return of Information and copies of Information as well as the destruction of data using in any way the Information. I hereby certify on behalf of [TOWN /COMPANY], as the case may be, that after a reasonably diligent review of our files and records, including individual employee's files and records, [TOWN / COMPANY] has returned all Information and has destroyed all other information in which [TOWN / COMPANY] used in any way any Information, both in accordance with the terms of the Agreement.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

CONFIDENTIALITY AND ASSURANCES AGREEMENT

I have been given a copy of and have reviewed the Confidentiality and Assurances Agreement (the "Agreement") between New York State Electric & Gas Corporation and the Town of Ulysses, dated as of October __, 2017 and understand the terms of the Agreement. Moreover, I understand that Information, as defined therein, is being provided to me pursuant to the terms and restrictions of the Agreement. I hereby agree to maintain the confidentiality of all Information in accordance with the terms of the Agreement.

By: _____

Name: _____

Title: _____

Date: _____