

TRAIL LICENSE

This agreement made this ____ day of _____, 2019 between **NEW YORK STATE ELECTRIC & GAS CORPORATION**, a New York corporation with its principal office at 18 Link Drive, Binghamton, New York 13795 (hereinafter "NYSEG") and the **TOWN OF DRYDEN** with offices at 93 East Main Street, Dryden, New York 13053 (hereinafter "Licensee").

WHEREAS, Licensee wishes to acquire interim rights to use land owned by NYSEG to be used for the public purpose of walking, hiking, jogging, bicycling and cross country skiing trails or other legal public purpose as approved by the Town in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public; and

WHEREAS, the State of New York, by way of the Environmental Quality Bond Acts of 1972, 1986 and 1989 and in General Obligations Law Section 9-103, has encouraged municipalities to acquire rights to use land to be used for trails as part of a statewide trail system; and

WHEREAS, NYSEG is willing to allow the general public to use a portion of its land as walking, hiking, jogging, bicycling and cross-country skiing trails in and among the Towns of Ithaca, Dryden, Danby and Caroline if certain conditions are met.

NOW THEREFORE, the parties agree as follows:

In consideration of the sum of One Dollar (\$1.00), and in consideration of the agreements contained hereinafter, NYSEG grants without warranty of any kind to Licensee a revocable, non-exclusive license, to a parcel of property known as a portion of **NYSEG PROPERTY #TP 358 – BEING THE FORMER DL&W RAILROAD – ITHACA BRANCH – FROM THE TOWN OF ITHACA TOWN LINE ACROSS GERMAN CROSS ROAD TO THE TOWN OF DANBY TOWN LINE** (the "Trail") (Town of Dryden Tax Parcel #s 71.-1-25 and 71.-1-28), subject to the rights granted to others for use of the right-of-way and subject to any proper fee conveyances as shown on the sketch designated Exhibit A, attached hereto and made a part hereof (hereinafter "Premises"), to construct, maintain, operate, repair, and remove a walking, hiking, jogging, bicycling and cross country skiing trail and other legal public purposes as determined by Licensee (hereinafter referred to as "Permitted Activities").

It is understood and agreed that this license is granted upon the following terms and conditions:

1. This license is granted solely for use of the Trail for Permitted Activities for a period of 10 years, unless sooner terminated as provided below. The license may be extended for 5 EACH - 5 YEAR TERMS or such other term as may be agreed to, by mutual agreement of NYSEG and the Licensee.
2. Licensee shall have the right to construct, maintain, operate, repair and remove improvements and installations on the surface of the Premises and to place thereon directional signs, trail identification signs, regulatory signs, and control structures to prohibit unlawful use of the Trail and to foster and improve enjoyment thereof, subject to the provisions of paragraphs 6 and 7 herein.

3. Licensee shall have the right to protect the Premises from erosion and enhance the scenic value of the licensed Premises by improving and maintaining drainage, and planting and removing trees, plants or shrubs where and to the extent deemed necessary by Licensee, subject to the provisions of paragraphs 6 and 7 herein.

4. Upon the expiration or termination of any of the rights granted in this agreement, the Premises of NYSEG shall be left in a reasonably good condition satisfactory to NYSEG. All facilities, improvements or installations must be removed from the Premises upon expiration or termination of the License, except that particular facilities, installations or improvements may remain on the Premises upon Licensee obtaining express written approval from NYSEG.

5. NYSEG makes no representations to Licensee or any other person as to the adequacy, safety or fitness of the Premises for the Licensee's or any other person's intended use nor does NYSEG make any representations to Licensee or any other person as to the condition of the Premises. Licensee agrees to inspect the Premises to determine the adequacy, safety and fitness and compliance with laws of the Premises from time to time as necessary. Licensee agrees to maintain the Premises and improvements thereon in safe condition and to keep the Premises free from hazards. Under no circumstances shall NYSEG be required to improve or in any way alter the Premises as a result of or in connection with the License.

6. Licensee shall submit all plans and specifications for any work to be done on the Premises to NYSEG at least thirty days before any work is commenced, whether in regard to an original installation or in regard to a subsequent exercise of the rights granted herein. NYSEG shall have the right to require reasonable changes in such plans and specifications to the extent it deems such changes necessary or desirable. Under no circumstances will NYSEG be held to have any knowledge of the adequacy, safety or appropriateness of the plans and specifications. NYSEG requires said plans and specifications solely to (a) determine and advise Licensee of conflicts with NYSEG's present or planned facilities, and (b) have them available to assist NYSEG in its future use of the Premises. Licensee will bear all costs in constructing, maintaining, repairing, operating and removing the improvements, including the planting and removal referred to in paragraph "3" and will reimburse NYSEG for any expenses incurred by NYSEG made necessary by improvements including, but not limited to, gates to NYSEG's access roads and relocation of facilities so as to provide for required clearances. Nothing contained in this License shall prevent NYSEG from making improvements at its own expense, if NYSEG so desires.

7. Licensee shall notify NYSEG of the dates on which any work is to commence and terminate at least five days prior to each such date. If such five day notice is impossible, Licensee shall notify NYSEG as far in advance as is reasonably possible. NYSEG shall have the right to have a representative present during such work and such representative shall have the right to require work to be halted at any time if he or she reasonably deems it necessary to protect NYSEG's property or facilities; however, such right shall impose no duty whatsoever upon NYSEG.

8. Licensee shall not cause, nor, insofar as may be reasonably possible, shall it permit persons using the Premises to cause, (a) damage to the Premises, including but not limited to natural growth thereon, except as clearly necessary for the exercise of the privileges granted herein, and then only in accordance with paragraphs 6 and 7, (b) littering or befouling of the licensed Premises or other property of NYSEG of which the Premises are a part, (c) any fire to be set or started upon or about the Premises, intentionally or accidentally, (d) a nuisance to persons adjacent to the Premises, to other licensees – Licensee should inspect property and note any visual uses,

to NYSEG, or to the public in general, or improper or illegal conduct upon the Premises, (e) the discharge of firearms on or about the Premises, (f) fencing or obstruction of any part of the Premises without the written consent of NYSEG, (g) discrimination against any person by reason of age race, creed, color, national origin, sex or sexual orientation in the exercise of the privileges granted herein.

9. Licensee shall avoid, and shall be liable to NYSEG for, damage to or interference with NYSEG's facilities, which are now or hereafter upon the Premises, by Licensee or by persons using the Premises.

10. NYSEG shall have the right to use, for any purpose, the space above the Premises and such portions of the Premises on or below the ground as are not actually in use by Licensee. Regardless of impairment of Licensee's rights, NYSEG expressly reserves the right to install any of its utility facilities including, but not limited to, electric lines, conduits, wires, cables, guys, poles, towers, anchors and other appurtenances, as well as gas mains, pipes, connections and other appurtenances.

11. Should it appear necessary or desirable (such necessity or desirability being determined solely by NYSEG) that NYSEG have the use of any portion of the Premises for any of its own public utility uses, and that such use by NYSEG would interfere with Licensee's then existing use of the Premises, Licensee will, within ninety days after receipt of a written request so to do from NYSEG, relocate, at its own expense, such parts of its facilities as are designated in the request to other locations within the Premises of NYSEG.

12. Notwithstanding anything expressly or impliedly contained herein to the contrary, NYSEG shall have the right, for good cause shown, to demand removal of any and all facilities, improvements or installations made or installed by Licensee other than improvements to the trail surface, landscape and drainage, which improvements shall be deemed beneficial and not subject to removal by the Town, and/or to revoke and terminate this License and the privileges it confers by giving not less than 120 days' written notice to Licensee. Upon expiration of said notice period, this License and privileges herein granted shall be absolutely terminated and extinguished, save for the removal, reimbursement and indemnity obligations contained elsewhere herein. Upon the expiration of said notice period or if NYSEG and Licensee determine that a longer period is necessary, Licensee shall have removed all of its facilities, improvements or installations installed by or for it upon the Premises and shall have restored the Premises to a reasonably good condition satisfactory to NYSEG, all at the expense of Licensee; or, upon the failure of Licensee so to do within said notice period or such longer period as agreed to by NYSEG and Licensee, NYSEG shall have the right, without further notice, to accomplish, or have accomplished, said removal and Licensee hereby agrees to pay the cost thereof upon demand.

13. It is understood that Licensee shall not construct, maintain, operate or repair its facilities, improvements or installations at any point less than ten feet from NYSEG's installations, facilities, equipment, or appurtenances except in any instance where a subsequent installation by NYSEG makes such clearance impossible without a relocation by Licensee in which latter instance the then existing clearance will be maintained by Licensee unless paragraph 11 is invoked by NYSEG.

14. Licensee shall cause the Premises to be used in strict compliance with any federal, state and local statute, law, ordinance, code, rule or regulation.

15. Licensee shall not cause, nor insofar as may be reasonably possible, permit or suffer the storage, use, emission, dumping, depositing, placing, burying or disposing, in any manner, of any hazardous materials or wastes, toxic materials or wastes, and solid, liquid or semi-solid wastes as such terms are defined and regulated under any federal, state or local statute, law, ordinance, code, rule or regulation, and shall indemnify and hold harmless NYSEG, its successors or assigns, from any and all claims, demands, loans, damages, cost or expenses

(including attorney's fees and court costs) that are incurred or asserted in connection with Licensee's failure to observe such statutes, laws, ordinances, codes, rules or regulations.

16. The Licensee shall provide notice to NYSEG within twenty-four hours of the occurrence of any injury, death or property damage upon the Premises and also in the event of any release, emission, dumping, depositing, placing, burying or disposing of any hazardous, toxic or petroleum based wastes or materials or solid, liquid or semi-solid wastes as such terms are defined and regulated under any federal, state or local statute, law, ordinance, code, rule or regulation.

17. Neither NYSEG nor the officers, employees, agents or servants of NYSEG shall be liable for personal injury or property damage to any person caused by the carelessness, negligence or conduct of Licensee or any person other than NYSEG, its employees or agents, in the use of the Premises connection with this License. Licensee agrees to defend, indemnify and hold harmless NYSEG and the officers, employees, agents or servants of NYSEG from any and all claims and damages, loans, costs, expenses (including costs of defending any claims, including attorney's fees, and costs of responding to or participating in any Public Service Commission investigations or proceedings brought against NYSEG or Licensee because of any knowing or unknowing violations by Licensee of any applicable Public Service Commission investigations or proceedings brought against NYSEG or Licensee because of any knowing or unknowing violations by Licensee of any applicable Public Service Commission opinions or regulations to which NYSEG is subject), and liability of whatsoever kind or nature arising out of or in any way caused by, directly or indirectly, the existence of this license, the presence of Licensee's facilities on the Premises, or the acts or failure to act of Licensee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing.

18. Licensee shall purchase and maintain in effect at all times a protective liability and property damage insurance policy from an insurance company licensed to do business in the State of New York to cover the Premises, designating NYSEG, its officers, employees, agents and servants as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for bodily injury and with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for property damage. Licensee shall annually furnish to NYSEG written notice of any change in, or cancellation of, coverage under the policy at least thirty days prior to the effective date of such change or cancellation. The insurance policy shall also provide that the issuing company will provide to NYSEG such notice as specified in the notice provision hereof. The rights granted by this License shall immediately terminate upon the lapsing or cancellation of the insurance policy required by this provision.

19. Licensee may not abandon the facilities, installations or improvements it places or causes be placed within or upon the Premises without the prior written consent of NYSEG. If Licensee ceases to use or maintain its facilities, installations or improvements and NYSEG demands that the facilities, installations or improvements be removed (in the manner set forth in paragraph 12), Licensee shall cause the same to be removed, the Premises to be restored to an orderly condition as close to their original condition as possible, all at the Licensee's expense. Should Licensee fail to so remove within said notice period and NYSEG requires such removal, NYSEG shall have the right, without further notice, to accomplish, or have accomplished, said removal and Licensee hereby agrees to pay the cost thereof upon demand.

20. At no time shall the activities on, or use of, the Premises (or NYSEG's property of which the

Premises are a part) by Licensee or persons who are sponsored by, guests of, associated with, in the company of, or members or employees of Licensee be deemed adverse or hostile to NYSEG, nor shall such activities or uses create in any person any real property interests or prescriptive rights.

21. This license may not be assigned or transferred by Licensee in any manner. However, Licensee may enter into intergovernmental agreements with local municipalities and/or the State of New York for the purpose of developing, maintaining and operating the facilities authorized by this license. Partnering with other entities for trail purposes is acceptable.

22. NYSEG shall have the right to withhold any consent of NYSEG referred to herein for good cause shown in NYSEG's sole discretion.

23. All notices, demands and requests which may be or are required to be given by any party to the other shall be in writing and shall be deemed given when sent by United States Registered or Certified Mail, postage prepaid, (a) if for Licensee, addressed to the Town of Dryden, c/o Town Clerk, 93 East Main Street, Dryden, , New York 13053 or at such other place as Licensee may from time to time designate by written notice to NYSEG, or (b) if for NYSEG, addressed to NEW YORK STATE ELECTRIC & GAS CORPORATION, Attention: NY Property Management – Alice Richards, 18 Link Drive, Binghamton, New York 13795 or at such other place as NYSEG may from time to time designate by notice to Licensee.

24. Licensee recognizes that NYSEG may have previously granted rights to other parties above, on or below the Premises. In the future such rights shall only be granted for utility purposes directly relevant to NYSEG's business. NYSEG can consider this trail license in reviewing other requests to minimize any conflicts (ex. a request for a sewer crossing license from others would not interfere with the trail license) Should any conflict arise, Licensee shall use their best efforts to resolve the same. If questions remain unresolved, NYSEG shall be the sole arbiter.

25. This agreement is executed in duplicate; each party has one and each is an original for all purposes.

26. This agreement shall take effect only when signed by both parties and Licensee shall have complied with the insurance obligations set forth herein.

27. Licensee shall not record this License in the County Clerk's Office or any other place designated for recording or filing without the express written approval of NYSEG.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed.

NEW YORK STATE ELECTRIC & GAS CORPORATION

BY:

Alice D. Richards
Authorized Representative

On this ____ day of October, 2019, before me the undersigned, personally appeared Alice D. Richards, Authorized Representative, to me known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

TOWN OF DRYDEN

BY: _____

TITLE: _____

STATE OF NEW YORK):

SS:

COUNTY OF TOMPKINS):

On this ____ day of October, 2019, before me the undersigned, personally appeared _____, to me known or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public