

GRANT OF EASEMENT FOR PUBLIC TRAIL

This grant of easement is made on the effective date specified in Section 14 below, by and between **NEW YORK STATE ELECTRIC & GAS CORPORATION**, a corporation organized under the laws of the State of New York, having an office at 3 City Center, 180 South Clinton Avenue, City of Rochester, County of Monroe, State of New York, "Grantor", and **THE TOWN OF [TOWN NAME]**, "Grantee".

WITNESSETH, that the Grantor, in consideration of ONE DOLLAR, PAYMENT WAIVED (\$1.00), lawful money of the United States, paid by the Grantee, does hereby grant and release to the Grantee, their successors and assigns, a NON-EXCLUSIVE EASEMENT for the construction and use of an approximately TEN-(10) foot wide trail to be used solely for public recreational purposes for the purpose of walking, hiking, jogging and cross country skiing or other legal purpose permitted hereunder as approved by Grantee in order to enhance the conservation and enjoyment of natural or scenic resources and to further the general welfare of the public over portions of real property owned by the Grantor referenced as follows: NYSEG PROPERTY #TP 358 – BEING THE FORMER DL&W RAILROAD – ITHACA BRANCH from Burns Road in the Town of Ithaca to Tioga/Tompkins County line **Exhibit "A"**, attached hereto and incorporated herein, referred to as the "Grantor Property".

The easement initially is a floating easement that encompasses the entire area of Tax Parcels No. _____ and _____ as shown on **Exhibit "A"**. Grantee, at its cost and expense and in its sole discretion, shall determine the location of, and design and construct the approximately 10-foot wide trail. Upon completion of trail construction and associated facilities, the Grantee, at its sole cost and expense, shall prepare **Exhibit "B"**, which shall be acceptable to Grantor and shall be attached hereto and incorporated herein by reference. **Exhibit "B"** shall be or a map that depicts, or a legal description of, a NON-EXCLUSIVE TWENTY (20)-FOOT WIDE EASEMENT with the as-built trail located within the Easement Premises. Upon Grantee's recording in the Tompkins County Clerk's Office of this Grant of Easement for Public Trail with **Exhibit "B"** attached, the floating easement will automatically terminate, and the Easement Premises will automatically become the 20-foot area shown in **Exhibit "B"**.

As used herein, the "Easement" and "Easement Premises" refer to the 20-foot wide corridor within the Grantor Property as shown or described in **Exhibit "B"**, and the "Trail" or "Trail Easement" refers to the portion of the Easement Premises consisting of the ten-(10) foot wide trail as shown or described in **Exhibit "B"**.

Grantor and Grantee hereby further agree as follows:

1. Grantor makes no representations, covenants or warranties to Grantee or any other persons to Grantor's ownership or title to the Grantor Property, or the adequacy, safety or fitness of the Easement Premises for the Grantee's or any other person's intended use nor does Grantor make any representations to Grantee or any other person as to the condition of the Easement Premises. Grantee shall inspect the Easement Premises to determine the adequacy, safety or fitness and compliance with laws of the Easement Premises from time to time as necessary. In all respects the Grantor Property

and the Easement Premises are provided "as is, with all faults". Grantee agrees to maintain the Easement Premises and improvements thereon in safe condition and to keep the Easement Premises free from hazards. Under no circumstances shall Grantor be required to improve or in any way alter the Grantor Property or the Easement Premises as a result of or in connection with the Trail Easement.

2. The Easement granted herein, the Easement Premises, and the Trail Easement shall be subject to the following rules, requirements, and restrictions:

- (a) No advertising of any kind shall be located on, upon, or within said Easement Premises;
- (b) Grantee shall have the right to construct, maintain, operate, repair and remove non-utility facilities, fixtures and appurtenances on the surface of the Easement Premises (and drainage facilities on or below the surface of the Easement Premises) (collectively, "Grantee Facilities") as are conducive to a walking trail or reasonably necessary for the safety of Trail users, and to place thereon directional signs, trail identification signs, regulatory signs, and control structures to prohibit unlawful use of the Easement Premises and to repair and maintain the surface of the Easement Premises conducive to a walking trail and otherwise foster and improve the safety and enjoyment thereof. With Grantor's prior consent, Grantee may enter upon portions of the Grantor Property adjacent to the Easement Premises as necessary for the purpose of constructing, maintaining, repairing or removing the Grantee Facilities on the Easement Premises. With Grantor's prior consent, Grantee may enter upon and alter portions of (i) the Grantor Property adjacent to the Easement Premises, and (ii) drainage facilities located on the Grantor Property, as necessary for the purpose of protecting the Grantee Facilities on the Easement Premises. No structures or improvements of any kind shall be located within the Easement Premises other than those that are conducive to a walking trail or reasonably necessary for the safety of Trail users. Grantee, at its sole cost, risk, and expense, may erect and maintain such fencing and barriers within the Easement Premises as may be reasonably necessary to prevent access to the Trail by motor vehicles, provided the design of any such fencing or barriers shall be approved in advance by Grantor so as to allow access and full use of Grantor Facilities as reserved herein. Except as deemed necessary or convenient by Grantor for the construction, operation, maintenance, replacement, or upgrade of Grantor Facilities (defined below) or to address any emergency situation as determined in its sole discretion, Grantor shall not erect fences, barriers, or signs that impede access to, or permitted use of, the Trail. Grantor and Grantee may work in good faith to accommodate alternative access to the Trail while Grantor is performing work, however, Grantor is under no obligation to do so. Grantee and Grantor agree to discuss such alternative access possibilities at least

fourteen (14) days prior to commencement of Grantor's activities, provided they are not in response to an emergency;

- (c) The general topography and elevation of the Grantor's Property and the Easement Premises shall be maintained or restored to the approximate level as of the date hereof, except that Grantee may maintain the Trail and the Easement Premises as shown on the attached **Exhibit "B"**;
- (d) Except as permitted by subsection (e) below, activities within the Easement Premises shall be limited to non-motorized passive recreation, designated for foot and bicycle use and the like;
- (e) Use of any motorized vehicle or similar mechanical means of locomotion, including automobiles, motorcycles, snowmobiles, mopeds, or other all-terrain vehicles shall be prohibited, except for e-bikes, and except that Grantee may use reasonable motorized vehicle(s) and equipment in the Easement Premises and on adjoining Grantor Property in the event of a bona-fide emergency posing a threat to property or persons, and for construction and maintenance purposes as reasonable and appropriate. Grantee may permit motor-driven wheelchairs or all-terrain vehicles for the use of disabled persons within the Easement Premises consistent with the permitted purposes of this Easement;
- (f) Grantee shall not cause, nor, insofar as may be reasonably possible, shall it permit persons using the Easement Premises to cause: (a) damage to the Easement Premises, including but not limited to natural growth thereon, except as clearly necessary for the exercise of the privileges granted herein, (b) littering or befouling of the Easement Premises or other portions of the Grantor Property, (c) any fire to be set or started upon or about the Easement Premises, intentionally or accidentally, (d) a nuisance to persons adjacent to the Easement Premises, to other grantees, to Grantor, or to the public in general, or improper or illegal conduct upon the Easement Premises, (e) the discharge of firearms on or about the Easement Premises, (f) fencing or obstruction of any part of the Easement Premises except as otherwise permitted herein, and/or (g) discrimination against any person by reason of race, creed, color, national origin, sexual orientation or sex in the exercise of the privileges granted herein;
- (g) Grantee shall have the right to protect the Easement Premises from erosion and enhance the scenic value of the Trail Easement by planting and removing trees, plants or shrubs to the extent deemed necessary by Grantee, provided such trees, plants or shrubs shall be of species and shall be planted in locations acceptable to the Grantor. Grantee shall clear brush as required to maintain the Trail Easement and shall remove dead, dying or diseased vegetation within the Trail Easement which poses a safety risk to Trail users or to Grantor's Facilities; otherwise, Grantee may cut or remove additional vegetation only with the prior written consent of the Grantor.

Grantee shall not employ herbicides, pesticides, growth inhibitors or other chemicals on the Easement Premises without the prior written consent of the Grantor. Grantor may cut or harvest any trees, shrubs, or plants within the Trail Easement that Grantor determines in its sole discretion pose, or with the passage of time may pose, a risk to Grantor's Facilities, persons or property, without prior consent of the Grantee after seven (7) days' notice to Grantee;

- (h) Except as specifically permitted under this Easement, no rights-of-way, easements of ingress or egress, driveways, roads, utility lines or easements or other servitudes shall be granted, constructed, developed or maintained in, on, over, under or across the Grantor Property or the Easement Premises without the prior written permission from a Vice President of Grantor. Grantee acknowledges that no employee, agent, contractor, or other representative of Grantor is authorized to convey any interest, license, right-of-way, or other right in or to the Grantor Property other than an officer of Grantor;
- (i) Except for Trail construction, maintenance or relocation, Grantee shall not permit or cause any disturbance of the surface of the Trail Easement area, including but not limited to filling, excavation, removal of topsoil, sand, gravel, rocks or minerals, or change of the topography of the Trail Easement area in any manner. In no case shall surface mining of subsurface oil, gas, or other minerals be conducted or permitted. Further, there shall be no placement, collection, or storage of trash, waste, ashes, chemicals, or any other unsightly or offensive material within the Trail Easement.

In performing any work on the Grantor Property or the Easement Premises, Grantee and its employees, agents, invitees, contractors, and subcontractors shall comply with reasonable safety and security measures promulgated by Grantor, including but not limited to those procedures set forth in **Exhibit "C"**, attached hereto and incorporated herein. In the event of any conflict between this Agreement and the provisions in **Exhibit "C"**, the provisions set forth in this Agreement shall govern;

- (j) Grantee shall cause the Easement Premises to be used in strict compliance with any applicable federal, state and local statute, law, ordinance, code, rule or regulation;
- (k) Grantee 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, on or near the Grantor Property or the Easement Premises, and shall, to the fullest extent permitted by law, indemnify and hold harmless Grantor Parties (defined below), and their

respective 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 Grantee's failure to observe such statutes, laws, ordinances, codes, rules or regulations.

3. Grantee shall submit all plans and specifications for any work (excluding routine repairs and maintenance that do not have plans and specifications) to be done on the Easement Premises or adjacent portions of the Grantor Property to Grantor at least thirty (30) 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. Grantor shall have the right to require changes in such plans and specifications to the extent it reasonably deems such changes necessary or desirable while taking into consideration acceptable trail design standards and/or ADA requirements, at Grantee's expense. Under no circumstances will Grantor be held to have any knowledge of the adequacy, safety or appropriateness of the plans and specifications. Grantor requires said plans and specifications solely to (a) determine and advise Grantee of actual or potential conflicts with Grantor's present or planned construction, maintenance, or operation of Grantor Facilities, and (b) have them available to assist Grantor in its future use of the Easement Premises. Grantee will bear all costs in constructing, maintaining, repairing, operating and removing the Grantee Facilities to the extent necessary, including the planting and removal referred to above and will reimburse Grantor for any expenses reasonably incurred by Grantor made necessary by Grantee Facilities including, but not limited to, gates to Grantor's access roads and relocation of facilities so as to provide for required clearances. Nothing contained in this Easement shall prevent Grantor from making improvements at its own expense, if Grantor so desires, provided they do not impair Grantee's rights hereunder. Grantee will have the right to occupy additional areas of Grantor Property as temporary workspace outside of the Easement Premises during construction and maintenance activities, with prior consent of Grantor.

Grantee shall notify Grantor of the dates on which any work is to commence and terminate at least five (5) days prior to each such date. If such five (5) day notice is impossible, Grantee shall notify Grantor as far in advance as is reasonably possible. Grantor, at Grantor's sole cost and expense, 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 Grantor's Facilities; however, such right shall impose no duty whatsoever upon Grantor.

In the event of a bona-fide emergency posing a threat to property or persons, Grantee may undertake work to mitigate or prevent the threat without the need for Grantor's advance approval of plans and specifications for the work. Grantee shall notify Grantor of the emergency and work as far in advance as is reasonably possible.

4. Grantee shall avoid, and shall be liable to Grantor for, damage to or interference with Grantor's Facilities, which are now or hereafter upon the Easement Premises, by Grantee or by persons using the Easement Premises, including members of the public.

5. Grantor reserves to itself and its successors and assigns, full right in its sole discretion to use the Grantor Property, the Easement Premises, and the Trail to construct, reconstruct, relocate, extend, operate, inspect, maintain, repair, replace, and, at its pleasure, remove poles, lines of poles, supporting structures, cables, crossarms, overhead and underground wires, wire conduits, guys, down guys, anchors, braces, conduits, mains, pipes, regulators, valves, vaults, meters, stacks, manholes, cabinets, services, communication facilities, and any and all other appurtenances and fixtures (collectively referred to as "Grantor Facilities") currently installed, or which the Grantor may require in the future, in, on, over, under, and above the Grantor Property, the Easement Premises, or the Trail for the transmission or distribution of electricity and/or natural or manufactured gas, or any other lawful purpose (each, individually, an "Authorized Purpose" and collectively the "Authorized Purposes"), with free access over, under, on, and across the Easement Premises for all Authorized Purposes, as well as the right to trim, cut, and remove at any time by manual, mechanical, or chemical means trees and other vegetation, as well as other structures and other obstructions that Grantor deems necessary or desirable, in its sole discretion, to remedy or prevent interference with the construction, operation, or maintenance of Grantor Facilities. Grantor agrees, however, that in exercising the aforementioned rights, it shall use commercially reasonable efforts to limit its use to the space above the Easement Premises and such portions of the Easement Premises on or below the ground as are not then used by the Grantee for the Trail. Except as provided in the next succeeding sentence, Grantor shall restore any Trail surfaces disturbed by the exercise of Grantor's rights. Should it appear necessary or desirable (such necessity or desirability being determined solely by Grantor) that Grantor have the use of any portion of the Easement Premises for any Authorized Purpose(s), and that such use by Grantor would interfere with Grantee's then existing use of the Easement Premises, Grantee shall, within thirty days after receipt of a written request so to do from Grantor, relocate, at Grantee's own expense, such parts of the Grantee Facilities (except for trail stone dust material) as are designated in the request to other locations on the Grantor Property, designated by Grantor for such purpose. If such relocation is outside of the Easement Premises, Grantor shall modify the Easement to include a 20-foot easement centered on the relocated portion of the Trail.

It is understood that Grantee shall not construct, maintain, operate or repair Grantee Facilities at any point less than ten (10) feet from Grantor Facilities, except in any instance where a subsequent installation by Grantor makes such clearance impossible without a relocation by Grantee in which latter instance the then-existing clearance will be maintained by Grantee.

6. Grantee shall notify Grantor within twenty-four (24) hours of Grantee's becoming aware of the occurrence of any injury, death or property damage upon the Easement Premises or any portion of the Grantor Property resulting from or related to construction, operation, or maintenance of the Trail or use of the Trail by the public, and also in the event of Grantee's becoming aware of any release, emission, dumping, depositing, placing, burying or disposing by Grantee or a Trail user on or near the Easement Premises or adjacent portions of the Grantor Property 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.

To the fullest extent permitted by law, neither Grantor, its affiliates, nor their respective officers, employees, agents or servants (the "Grantor Parties") shall be liable for personal injury, including death, or property damage arising from any use made of the Grantor Property, Easement Premises, or the Trail by the Grantee, its employees, agents, contractors, subcontractors, invitees, or other representatives, or the public. To the fullest extent permitted by law, Grantee shall defend, indemnify and hold harmless the Grantor Parties from any and all losses, claims, demands, and damages (including but not limited to punitive, incidental and consequential damages), loans, costs, expenses (including taxes, investigative costs, the costs of defending any claims, and costs of all appeals, as well as attorney's fees, and costs of responding to or participating in any Public Service Commission investigations or proceedings brought against Grantor Parties or Grantee because of any knowing or unknowing violations by Grantee of any applicable Public Service Commission orders, statutes or regulations to which Grantor is subject), interest, penalties, fines, and liability of whatsoever kind or nature (collectively, the "Losses") arising out of or in any way caused by, directly or indirectly, the existence of this Easement, use of the Easement Premises or the Trail by the public, the presence of Grantee Facilities on the Easement Premises, Grantee's use of the Grantor Property in connection with the construction, operation, maintenance, use and repair of the Trail or any portion thereof, or the acts or failure to act of Grantee, its agents, employees, servants, contractors, invitees or any other persons under the direction and control of any of the foregoing. Grantee's indemnity obligation hereunder shall not be subject to, or limited by, the availability or limits of liability insurance covering Grantor or Grantee. Grantee's indemnity obligation hereunder shall not extend to the proportion of such Losses caused by a reckless or intentional wrongful act of Grantor or by Grantor's negligence.

Grantee shall purchase and maintain in effect at all times during the term of this Easement a protective liability and property damage insurance policy from a reputable insurance company authorized to do business in the State of New York to cover the Easement Premises, designating the Grantor Parties as named or additional insured. The comprehensive general liability shall include contractual liability, independent contractors and personal injury liability insurance with limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for bodily injury and with limits of \$3,000,000 per occurrence and \$3,000,000 aggregate for property damage. Grantee shall annually furnish to Grantor 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 Grantor such notice as specified in the notice provision hereof. Further, the foregoing insurance coverage(s) shall be primary and non-contributing with respect to any other insurance or self-insurance which may be maintained by the Grantor Parties. Grantee shall insure that its contractors, subcontractors, representatives, agents, and invitees who perform any work on the

Easement Premises or the Grantor Property maintain the insurance coverages, limits, and endorsements as specified in this Section in favor of the Grantor Parties.

Grantor Parties shall be entitled to all limits of liability as set forth in General Obligations Law § 9-103 and such other applicable statutes that may from time to time be enacted.

Grantee acknowledges that conveyance of this Easement by Grantor is made in substantial reliance upon: (i) Grantee's agreements, covenants, warranties, and representations relating to indemnification and insurance, set forth in this Section 6, and those herein relating to Grantee's proper operation and maintenance of the Trail, and (ii) the liability limitations afforded Grantor Parties by General Obligations Law § 9-103.

7. Grantee may not abandon the facilities, installations or improvements it places or causes be placed within or upon the Easement Premises without the prior written consent of Grantor. If Grantee ceases to use or maintain its facilities, installations or improvements and Grantor provides notice that the facilities, installations or improvements be removed, Grantee shall cause the same to be removed and the Easement Premises to be restored to an orderly condition as close to their original condition as possible, except for drainage work and stone dust, all at the Grantee's expense. Should Grantee fail to so remove within thirty (30) days of receipt of said notice from Grantor and Grantor requires such removal, Grantor shall have the right, without further notice, to accomplish, or have accomplished, said removal and Grantee hereby agrees to pay the cost thereof upon demand.

8. At no time shall the activities on, or use of, the Easement Premises (or Grantor Property of which the Easement Premises are a part) by Grantee or persons who are sponsored by, guests of, associated with, in the company of, or members or employees of Grantee be deemed adverse or hostile to Grantor, nor shall such activities or uses create in any person any real property interests or prescriptive rights except those explicitly granted by this Easement.

9. Grantee shall not be authorized to assign or transfer its rights under this Easement absent the express written consent of the Grantor. Grantee shall provide Grantor a minimum of sixty (60) days' notice for a request to assign or transfer this Easement to a third party.

10. Grantor's inspection, review, approval, or comment with respect to the design, construction, operation, and/or maintenance of the Trail or any facilities, improvements, structures, trees, shrubbery, or other materials related thereto shall not be construed as confirming or endorsing the design of the Trail and/or Grantee Facilities, or as any warranty of adequacy, safety, durability, or reliability of the Trail and/or Grantee Facilities and the Grantor Parties shall not, by reason of any such inspection, review, approval, and/or comment be liable or responsible for the strength, details of design, adequacy, or suitability of the Trail or the Grantee Facilities, nor shall Grantor's approval or acceptance be deemed to be an endorsement of the Trail or any Grantee Facilities.

11. 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, or overnight courier (a) if for

Grantee, addressed to _____, or (b) if for Grantor, addressed to New York State Electric & Gas Corporation, 180 S. Clinton Avenue, Rochester, New York 14607, Attention: Land Management. Grantor and Grantee may change the address to which notices are sent by giving notice of such change in the manner set forth above to the other party.

12. Grantee recognizes that Grantor may have previously granted rights to other parties above, on, or below the Easement Premises. Should any conflict arise, Grantee shall use their best efforts to resolve the same at Grantee's expense. If questions remain unresolved, Grantor shall be the sole arbiter.

13. Grantee represents and warrants to the Grantor that it possesses full authority to execute this Easement and to carry out and perform all obligations, agreements, warranties, and covenants binding upon the Grantee herein.

14. Pursuant to Public Service Law Section 70, Grantor shall file notice with the New York State Public Service Commission (the "Commission") that it proposes to enter into this Easement. Absent denial by the Commission or a determination by the Commission that its consent is required prior to the Expiration Date (as defined below), the Easement shall be deemed granted by Grantor to the Grantee on the ninety-first (91st) day after Grantor files such notice ("Expiration Date"), unless earlier consented to by the Commission, in which case the Easement shall be deemed granted on the day of such consent. If the Commission determines prior to the Expiration Date that its consent is required, the Commission thereafter consents to the Easement, and the consent is contingent upon conditions mandated by the Commission that are acceptable to Grantor in its reasonable discretion, the Easement shall be deemed granted on the date Grantor notifies Grantee that the conditions are fully met. If the Commission's consent is contingent upon conditions mandated by the Commission that are not acceptable to Grantor in its reasonable discretion, or if the Commission denies Grantor's request for consent, the Easement shall not become effective, and Grantor and Grantee shall in good faith continue to negotiate this Easement in a manner that would facilitate Commission consent.

TO HAVE AND TO HOLD the above-granted rights unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed by their duly authorized officers the day(s) and year written below.

NEW YORK STATE ELECTRIC & GAS CORPORATION

By: _____

Print: _____

Title: _____

[GRANTEE]

By: _____

Print: _____

Title: _____

State of _____)
County of _____) ss:

On the _____ day of _____ in the year **20**____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of _____)
County of _____) ss:

On the _____ day of _____ in the year **20**____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

EXHIBIT B
EASEMENT PREMISES AND AS-BUILT TRAIL

EXHIBIT C
GENERAL CONDITIONS FROM RGE/NYSEG