

**WEST SENECA TOWN OFFICES**  
**1250 Union Road**  
**West Seneca, NY 14224**

**TOWN BOARD PROCEEDINGS**  
**Minutes #2015-24**  
**December 14, 2015**

Supervisor Sheila M. Meegan called the meeting to order at 7:00 P.M. with 30 seconds of silent prayer followed by the Pledge of Allegiance led by Town Engineer Steven Tanner.

**ROLL CALL:** Present - Sheila M. Meegan Supervisor  
Eugene P. Hart Councilman  
Absent - William P. Hanley, Jr. Councilman  
(due to death in family)

Supervisor Meegan read the Fire Prevention Code instructing the public where to exit in case of a fire or an emergency.

The meeting was dedicated to the memory of Erminio Liberatore.

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**24-A MINUTES TO BE APPROVED**

- Motion by Supervisor Meegan, seconded by Councilman Hart, to approve Minutes #2015-23 of November 23, 2015.

Ayes: All

Noes: None

Motion Carried

**24-B TABLED ITEMS**

1. Town Engineer re Change order for asbestos abatement at Kiwanis Center

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve change order #1 for Caysea Contracting Corporation in the amount of \$13,727.96 for the asbestos abatement project at the Kiwanis Center due to additional quantities of vapor barrier discovered above grade.

Ayes: All

Noes: None

Motion Carried

**24-C COMMUNICATIONS**

1. Town Justice re Retirement of Dale McCabe

Motion by Supervisor Meegan, seconded by Councilman Hart, to accept the retirement of Honorable Dale McCabe and terminate him as Town Justice effective December 30, 2015 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All

Noes: None

Motion Carried

**24-C COMMUNICATIONS**

2. Supervisor Meegan re Resolution in support of The Safe Staffing for Quality Care Act

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the attached resolution in support of The Safe Staffing for Quality Care Act.

Ayes: All                      Noes: None                      Motion Carried  
\*APPENDICES\*

3. Councilman Hart re Appointment of George Clifford to Planning Board

Motion by Supervisor Meegan, seconded by Councilman Hart, to appoint George Clifford to the Planning Board filling the remaining term of a retired board member effective December 15, 2015 through December 31, 2020 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

Mr. Clifford was sworn in by retired Town Justice Richard B. Scott.

4. Town Attorney re Dedication of Clearview Drive and Vista Court

Motion by Supervisor Meegan, seconded by Councilman Hart, to accept the dedication of Clearview Drive and Vista Court and authorize the Supervisor to execute the necessary documents to complete the transfer.

Ayes: All                      Noes: None                      Motion Carried

5. Town Attorney re Memorandum of Agreement with White Collar Unit

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize the Supervisor to execute the attached Memorandum of Agreement whereby the White Collar Unit has agreed to a procedure of progressive discipline of employees covered under the White Collar contract.

Ayes: All                      Noes: None                      Motion Carried  
\*APPENDICES\*

**24-C COMMUNICATIONS**

6. Town Attorney re Purchase of the western portion of "The Oxbow"

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize the Supervisor to execute the attached Purchase and Sale Agreement whereby the town contracts to purchase 13.24 acres of vacant land that comprises the westerly portion of what is commonly known as "The Oxbow" for \$29,000 and authorize the Supervisor to take all necessary actions to perform the agreement, noting the entire purchase will be funded by the proceeds of a Cooperative Agreement between the town and the United States Fish and Wildlife Service.

On the question, Councilman Hart questioned the source of this funding. Town Attorney John Fenz responded a local public authority worked with US Fish and Wildlife Association to remediate a spill. A superfund was created and the town has received the money.

Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

7. Town Attorney re Agreement with West Seneca Chamber of Commerce

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize the Supervisor to execute the necessary documents to enter into the attached Professional Services Agreement with the West Seneca Chamber of Commerce, noting the town shall pay the Chamber of Commerce \$15,000 in exchange for one (1) year of services.

On the question, Supervisor Meegan recited some of the duties of the Chamber of Commerce which includes: attending scheduled manager meetings with the Erie County Industrial Agency ("ECIDA"), actively soliciting businesses to locate within the town's boundaries, assisting West Seneca businesses interested in relocation or expansion within the town; acting as a liaison between the ECIDA and West Seneca businesses and reporting quarterly to town representatives.

Code Enforcement Officer John Gullo stated he has worked with Gerald Hathaway of the Chamber of Commerce on locating several businesses in the town in the proper zoning.

Councilman Hart commented that hiring a consultant to do this work would cost a lot more money.

Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

**24-C COMMUNICATIONS**

8. Town Attorney re Agreement with NYSEG

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize the Supervisor to execute the necessary documents to enter into the attached agreement to purchase NYSEG's street lighting facilities in the Town of West Seneca and the ancillary Pole Attachment Agreement, noting that pursuant to the agreement NYSEG will receive \$804,866 in exchange for transferring title of the facilities to the town and pursuant to the provisions of the Energy Performance Contract dated November 15, 2014 the purchase price will be paid on behalf of the town by John W. Danforth Company.

On the question, Town Engineer Steven Tanner stated this involves 95 percent of the lights and light poles in the town which will be switched to LED lighting. The town currently pays a monthly rental fee for the poles, a cost of approximately \$325,000 per year for maintenance. With the town owning lights, the cost of maintenance will be about \$35,000 annually. There will also be a savings in energy using LED lighting which is lower wattage but the same light output. Additional savings can be used toward financing of the library to do energy performance work. The estimated savings is \$3 million over the next 15 years.

Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

9. Highway Sup't. re Purchase of lawn mower for Buildings & Grounds Dept.

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the purchase of one Ferris mower for the Buildings & Grounds Department from Schaub Equipment Rental at their low quote of \$9,900.

Ayes: All

Noes: None

Motion Carried

10. Highway Sup't. re Appointment of part-time laborers in Buildings & Grounds Dept.

Motion by Supervisor Meegan, seconded by Councilman Hart, to appoint James Deppeler and Ryan McCoy as part-time laborers in the Buildings and Grounds Department effective December 15, 2015 at a rate of \$9 per hour contingent upon the passing of drug and alcohol testing and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All

Noes: None

Motion Carried

**24-C COMMUNICATIONS**

11. Chief Denz re Status change for part-time Public Safety Dispatchers to part-time seasonal

Motion by Supervisor Meegan, seconded by Councilman Hart, to change the status of part-time Public Safety Dispatchers Andrew Wagner, Maria Ferrucci, Andrew Oscypala and Richard Miller to part-time seasonal effective December 1 - December 31, 2015 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

12. Town Clerk re Status change for part-time clerks to part-time seasonal

Motion by Supervisor Meegan, seconded by Councilman Hart, to change the status of part-time clerks Margaret Pomana and Ellen Zawodzinski to part-time seasonal effective January 4 – February 26, 2016 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

13. Finance Office re Budgetary transfer request

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the following budget transfers:

From:

|   |          |
|---|----------|
| 1.7140.0100 - Salary of Recreation Director   | \$22,500 |
| 1.7140.0414 - General Mandated Training       | 541      |
| 1.7140.0416 - Gasoline                        | 490      |
| 1.7140.0448 - Print, Lit, Advertising         | 2,000    |
| 1.7140.0230 - Equipment                       | 5,000    |
| 1.7140.0476 - Summer Day Camp                 | 3,500    |
| 1.7180.0100 - Salary of Recreation Supervisor | 5,000    |

To:

|   |        |
|---|--------|
| 1.7140.0149 - Recreation Employee P/T   | 33,743 |
| 1.7180.0149 - Lifeguards                | 5,000  |
| 1.7140.0102 - Salary of YES Coordinator | 288    |

Ayes: All                      Noes: None                      Motion Carried

**24-C COMMUNICATIONS**

14. Finance Office re Budget Amendment request

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve an amendment to the 2015 General Fund budget increasing revenue acct. #1.0001.2705 Donations by \$17,500 and increasing expense acct. #1.7140.0149 Salary of part-time employees (payroll costs for Youth Theatre) by \$17,500.

Ayes: All                      Noes: None                      Motion Carried

15. Finance Office re General Fund expenditure for Courtroom Handicap Accessibility Project

Motion by Supervisor Meegan, seconded by Councilman Hart, to adopt the attached resolution for transfer of \$125,000 from the General Fund Reserve to capital project #5.1110.0200.0534 for appropriations on the Courtroom Handicap Accessibility Project, subject to permissive referendum.

Ayes: All                      Noes: None                      Motion Carried  
\*APPENDICES\*

16. Youth Service Coordinator re 2016 Summer Day Camp schedule

Motion by Supervisor Meegan, seconded by Councilman Hart, to accept the attached schedule for Summer Day Camp 2016 which includes dates, activities and fees, noting the capacity of participants each week will be limited to 90 campers.

Ayes: All                      Noes: None                      Motion Carried  
\*APPENDICES\*

17. Highway Supt. re Change order for Concrete Storm Damage Repair

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve a change order in the amount of \$13,860 for Sibley Construction for Sections C and D of the Concrete Storm Damage Repair Contract due to addition of the following locations: 8 Peters Circle - \$3,080; 37 Deer Chase Road - \$2,024; 108 Hemlock Drive - \$2,112; 686 Cindy Lane - \$3,564; 692 Cindy Lane - \$3,080; noting this brings the final cost to \$78,560.

Ayes: All                      Noes: None                      Motion Carried

**24-D REPORTS**

- Jacqueline A Felser, Town Clerk's report for November 2015 received and filed.
- John A Gullo, Code Enforcement Officer's report and plumbing inspector's report for November 2015 received and filed.

**24-E APPROVAL OF WARRANT**

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the vouchers submitted for audit, chargeable to the respective funds as follows:

General Fund - \$225,654.18; Highway Fund - \$35,620.39; Special Districts - \$45,938.97; Capital Fund - \$305,918.45 (voucher #'s 91262 - 91977); Trust & Agency Fund - \$113,934.96 (voucher #'s 91782 - 92063)

Ayes: All

Noes: None

Motion Carried

**ISSUES OF THE PUBLIC**

**LICENSING CATS**

Beverly Leising referred to the recent SPCA situation with a cat hoarder and questioned if it is the same person as a previous issue.

Code Enforcement Officer John Gullo advised that it is the same person, but his office was not contacted on this issue.

Beverly Leising commented that animals are suffering because of the town's inability to do something and suggested the town take a stand and limit the number of cats per household along with licensing cats.

Supervisor Meegan responded the town cannot inspect people's homes for cats.

Town Attorney John Fenz added that cats are not defined in NYS Agriculture & Markets Laws and there is little the town can do with regard to the licensing of cats.

**PLAYGROUND SIGNS/POLICE EXPANSION PLAQUE**

Beverly Leising questioned if incorrect signs at the playgrounds have been rectified. Supervisor Meegan responded she is in the process of having the signs changed and will also be ordering the plaque for those that contributed funds for the police expansion.

**ISSUES OF THE PUBLIC**

**NYS PROPOSED RETIREMENT BILL**

Beverly Leising referred to Assemblyman Kearns' proposal that corrupt officials not receive their retirement and asked that this be adopted locally. She suggested the Town Board back Assemblyman Kearns' idea by placing an ad in the Pennysaver or putting it on the town's website.

**ABANDONED STATE PROPERTIES**

Beverly Leising complimented Assemblyman Kearns who is working diligently to put NYS owned and abandoned homes back on the tax roll. Code Enforcement Officer John Gullo commented the list of properties is down from 90 to 57 homes.

**CHANGING TELEPHONE POLES**

Amy Carpenter suggested changing the telephone poles to better looking light stanchions and Supervisor Meegan responded that is part of the proposed streetscape plan.

**HEALTH INSURANCE CONSORTIUM**

Amy Carpenter referred to a state grant to help fund insurance groups for municipalities in Niagara County. Supervisor Meegan responded the town has been in a consortium for health insurance for the last seven years with the County of Erie, Erie County Water Authority, ECC North and South, Erie County Medical Center, NFTA, OTB, Town of Orchard Park and Town of Tonawanda.

**SENECA MALL SITE STUDY**

Amy Carpenter questioned the status of the feasibility study for the Seneca Mall site. Town Attorney John Fenz responded the information will be available on the town's website later this week. A public hearing will then be scheduled at one of the high schools for the consultant to deliver the findings of the study. The public hearing will be advertised in the Buffalo News and West Seneca Bee and via Code Red.

**COURTROOM ACCESSIBILITY PROJECT COSTS**

Frank Russo questioned the courtroom accessibility project cost. Supervisor Meegan responded the courtroom had to be made ADA compliant and asbestos remediation was also included in the cost.

**ISSUES OF THE PUBLIC**

**UNION NEGOTIATIONS**

Frank Russo questioned the status of negotiations with the three bargaining units. He referred to Amherst elected officials ending the practice of lifetime health benefits and also suggested five year contracts, no raises and language flexibility with use of part-time employees instead of full-time employees. Councilman Hart responded they are in the planning stages and are exchanging proposals.

**PRESENTATION OF COMMUNICATIONS BY BOARD MEMBERS AND DEPARTMENT HEADS**

**BREAKFAST WITH SANTA**

Youth Service Coordinator Lauren Masset thanked everyone for attending Breakfast with Santa which was held Sunday, December 13<sup>th</sup>. YES volunteers worked hard to host the sold out event and Ms. Masset offered special thanks to Highway Supt. Matthew English for donating coloring books, Senior Recreation Therapist of Senior Services Mary Josefiak for her help and Supervisor Meegan, Councilman Hart, Councilman Hanley and Town Clerk Jackie Felsler for their continued support.

**RETIREMENT OF TOWN JUSTICE DALE MCCABE**

Department heads and board members wished Town Justice Dale McCabe well in his retirement.

**LIBRARY EXPANSION**

Supervisor Meegan thanked Councilman Hart for meeting with Congressman Higgins to get additional funding for the library expansion and Councilman Hart commented this is the start of the town center which he believes will be a very affordable project.

**SWEARING IN CEREMONY**

Supervisor Meegan announced the swearing in ceremony will be held January 2, 2016 at 2 P.M. in the courtroom at Town Hall.

**ADJOURNMENT**

Motion by Supervisor Meegan, seconded by Councilman Hart, to adjourn the meeting at 8:00 P.M.

Ayes: All

Noes: None

Motion Carried

  
\_\_\_\_\_  
**JACQUELINE A FELSER, TOWN CLERK**

**APPENDIX L**

THIS AGREEMENT (the "Agreement") made and entered into this 17th day of November 2015 by the Civil Service Employees Association, Town of West Seneca White Collar Unit (the "Union") and the Town of West Seneca (the "Town") (collectively the "Parties").

**WITNESSETH**

WHEREAS, the Town and the Union have entered into a collective bargaining agreement (the "CBA"), effective beginning January 1, 2011 and until December 31, 2015, which governs the terms and conditions of employment of members of the Union; and

WHEREAS, Article 20, Section 20.9 of the CBA provides for a discipline, discharge and accompanying grievance procedure for employees covered by the CBA; and

WHEREAS, the Parties believe it would be beneficial to supplement aforesaid provisions with respect to issues of employee discipline and discharge and resolving such difficulties results in a benefit to each of the Parties; and

WHEREAS, the Union and the Town engaged in negotiations in order to determine the form and procedure by which such progressive employee discipline and discharge would be conducted; and

WHEREAS, the Parties have reached an agreement with respect to such form and procedure by which employee discipline and discharge shall be conducted and wish to record such agreement in this memorandum, and hereby agree as follows:

1.) Counseling, Discipline and Discharge Procedure; Where a Department Head determines that an employee engaged in any acts or omissions, or patterns of acts or omissions, which constitute incompetency or misconduct, then the negotiated Counseling, Discipline and Discharge Procedure may include the following steps:

Counseling Meeting and Memorandum  
Verbal Warning  
Written Warning  
Suspension  
Discharge

- a.) Depending upon the nature of the offense, the Town reserves the right to skip any steps in the Counseling, Discipline and Discharge Procedure.
- b.) The employee shall be required to sign the notice of counseling or discipline. Such signature shall only indicate that the employee received the notice and not that the employee agrees with its comments and allegations. Should an

employee refuse to sign the notice of counseling or discipline, such refusal shall be noted on the form, and the employee's union representative shall initial next to such notation.

- c.) A copy of the notice of Counseling or Discipline will be provided to the employee at the time of the Counseling or Discipline and placed in the employee's personnel file at the Town.
- d.) Within five (5) working days of Counseling, Discipline or Discharge, the employee may submit responsive comments, in writing, to the Human Resources Department/Management Representative. These responsive comments shall also be included in the employee's personnel file.
- e.) For each of the steps of the Counseling, Discipline, and Discharge Procedure, the Department Head shall provide the employee with a Memorandum which specifies the policy reminder and the future expectations of the employee in achieving compliance.

2.) Counseling Meeting and Memorandum; The Department Head shall informally meet with the employee to discuss performance issues and address strategies for improvement or modification. This step of Counseling shall not be considered disciplinary in nature, and therefore shall not be subject to the grievance procedure. The purpose of Counseling shall be for coaching and to remind an employee of performance expectations, appropriate conduct, and consistent compliance with Town policy.

The Counseling Memorandum shall be executed by the employee, the Department Head, a Union Representative, and the Human Resources Department/Management Representative. The Counseling Memorandum shall be provided to the employee and remain effective in the employee's personnel file for a period of one (1) year. A copy of the form of the Counseling Memorandum is affixed hereto as Appendix L-1.

3. Discipline and Discharge Procedure; For each of the steps of the Counseling, Discipline and Discharge Procedure, the Department Head shall provide the employee with a disciplinary form which specifies the behavior or conduct resulting in discipline. This memorandum shall be executed by the employee, the Department Head, a Union Representative, and the Human Resources Department/Management Representative. A copy of the form of the memorandum memorializing the Procedure is affixed hereto as Appendix L-2.

a.) Verbal Warning; if after being provided a reasonable period of time following the receipt of a Counseling Memorandum there is not sufficient improvement or another instance of unacceptable behavior or conduct, then the employee shall be subject to a Verbal Warning from the Department Head.

From the date of the Verbal Warning, the memorandum of Verbal Warning shall remain active in the employee's personnel file for a

period of one (1) year and shall be available to the employee upon request.

b.) Written Warning; if after being provided a reasonable period of time following receipt of the Verbal Warning, there is not sufficient improvement or another instance of unacceptable behavior or conduct, then the employee shall be subject to a Written Warning from the Department Head.

From the date of the Written Warning, it shall remain active in the employee's personnel file for a period of one (1) year and shall be available to the employee upon request.

c.) Suspension; if after being provided a reasonable period of time following the receipt of a written warning there is not sufficient improvement or another instance of unacceptable behavior or conduct, then the employee shall be subject to a Suspension from the Department Head, including a suspension without pay. The length of the suspension shall be at the discretion of the Department Head and Town Board.

From the date of the Suspension it shall remain active in the employee's personnel file for a period of two (2) years and shall be available to the employee upon request.

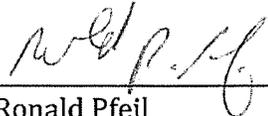
d.) Discharge; If, after being provided a reasonable period of time following the Suspension there is not sufficient improvement or there occurs another instance of unacceptable behavior or conduct, then the employee may be subject to discharge.

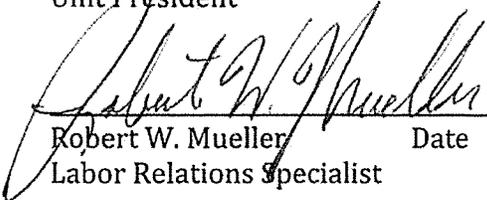
IN WITNESS WHEREOF:

FOR THE TOWN

\_\_\_\_\_  
Sheila Meegan      Date  
Supervisor

FOR THE CSEA

 11/17/15  
\_\_\_\_\_  
Ronald Pfeil      Date  
Unit President

 11/17/15  
\_\_\_\_\_  
Robert W. Mueller      Date  
Labor Relations Specialist

[To use this form, complete or update any sections in yellow. Remove highlighting before printing]

**Appendix L-1**

**Town of West Seneca Counseling Memo for White Collar Employees**

To: Employee  
From: Department Head  
CC: Union Representative, Human Resources, Employee File  
Date: Date  
Re: Employee Counseling

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This memo serves as notification of a Counseling Meeting due to an area of your performance in which I would like to see improvement or modification. On Date, we met to discuss your performance. The performance issues discussed are addressed below:

**DESCRIPTION OF ISSUE: [check one]**

|  |   |   |
|--|---|---|
| <input type="checkbox"/> Absenteeism                       | <input type="checkbox"/> Conduct                        | <input type="checkbox"/> Safety violation |
| <input type="checkbox"/> Policy and/or procedure violation | <input type="checkbox"/> Unsatisfactory job performance | <input type="checkbox"/> Other:           |

**EXPLANATION: [add explanation]**

**GOALS/CORRECTIVE BEHAVIOR: [add goals]**

If I do not see consistent and sufficient improvements in your performance, you may be subject to disciplinary action. *DEPENDING ON THE NATURE OF THE OFFENSE,*



[To use this form, complete or update any sections in yellow. Remove highlighting before printing]

**Appendix L-2**

**Town of West Seneca Disciplinary Form for White Collar Employees**

To: Employee  
From: Department Head  
CC: Union Representative, Human Resources, Employee File  
Date: Date  
Re: [Verbal Warning, Written Warning, Suspension]

This memo serves as notification of a [verbal warning, writing warning, suspension] due to deficiencies in your performance. On Date, we met to discuss your performance and present at the meeting were HR and Union Representative. The performance issues discussed are addressed below:

[If there have been past discussions about performance issues, mention here. If there is one event that is the cause of the warning, describe the event here]:

**ACTION TAKEN:** [check one]

|   |  |                                     |
|---|--|-------------------------------------|
| <input type="checkbox"/> Verbal Warning | <input type="checkbox"/> Written warning | <input type="checkbox"/> Suspension |
| <input type="checkbox"/> Other          |  |                                     |

*DEPENDING ON THE NATURE OF THE OFFENSE, THE TOWN OF WEST SENECA RESERVES THE RIGHT TO SKIP ANY STEPS AT ITS DISCRETION.*

**DESCRIPTION OF ISSUE:** [check one]

|  |   |   |
|--|---|---|
| <input type="checkbox"/> Absenteeism                       | <input type="checkbox"/> Conduct                        | <input type="checkbox"/> Safety violation |
| <input type="checkbox"/> Policy and/or procedure violation | <input type="checkbox"/> Unsatisfactory job performance | <input type="checkbox"/> Other:           |

**EXPLANATION:** [add explanation]

**GOALS/CORRECTIVE BEHAVIOR:** [add goals]



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Contract") is made as of December \_\_\_\_, 2015, by and between the Town of West Seneca, a New York municipal corporation, with an address of 1250 Union Road, West Seneca, New York (the "Purchaser") and Michael Serafini, Inc., a New York Corporation, with an address of 3529 Broadway, Cheektowaga, NY 14225 (the "Seller").

### RECITALS:

A. Seller is the owner of parcel of real property, an unimproved vacant lot, situated in the Town of West Seneca, County of Erie and State of New York, which includes the westerly portion of the geographic feature commonly known as "The Oxbow," consisting of approximately 13.24 acres (the "Property"), and

B. Seller wishes to sell and Purchaser wishes to purchase the Property on the terms and conditions stated in this Contract.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION,** the receipt and sufficiency of which are hereby mutually acknowledged, the Seller and Purchaser agree as follows:

1. Sale and Purchase. Seller shall sell to Purchaser and Purchaser shall purchase from Seller the Property on the terms, covenants, conditions and provisions stated in this Contract.

2. The Property. The Property shall be sold together with all rights of the Seller in and to all streets, highways, alleyways, driveways, easements, rights of way and appurtenances, permits, and licenses which benefit the Property.

3. Permitted Exceptions. The Purchaser shall accept the Property subject to:

- (a.) Rights of the public in and to any portion of the Property which lies within the boundary of any street, highway, alley or roadway, provided said rights do not conflict with the present or intended improvements and uses of the Property;
- (b.) Restrictions and agreements of record, provided they do not conflict with the present or intended improvements and uses of the Property, and provided the same have not been violated (unless their enforcement is barred by law);
- (c.) Water lines, sanitary sewer, drainage, gas distribution lines and mains, electrical, telephone, and other utility easements and rights of way of record, provided (i) they are located within fifteen (15)

feet of the boundary lines of the Property or may be used to service the Property, (ii) no buildings or other structures are located upon or within the easement areas; and (iii) they do not conflict with the present or intended improvements and uses of the Property; and

- (d.) Zoning, building and other land use and building regulations, ordinances and requirements affecting the Property (subject to Purchaser's right to terminate this Contract in accordance with Section 10 hereof), provided they do not conflict with the present or intended improvements and uses of the Property.

4. Price. Purchaser shall pay to Seller for the Property, the sum of TWENTY NINE THOUSAND and 00/100 Dollars (\$ 29,000.00) in U.S. funds, which shall be payable as follows:

(a) Upon execution of this Contract by Seller and Purchaser, the sum of ONE THOUSAND and 00/100 Dollars (\$1,000.00) ("Initial Deposit"), which shall be held in escrow by Seller's Attorney (the "Escrow Agent").

(b) Upon transfer of title as hereinafter provided, in cash, bank draft, certified check, or wire transfer, the balance of the purchase price shall be paid by Purchaser to Seller, subject to closing adjustments as hereinafter provided.

5. Adjustments at Closing. There shall be prorated and adjusted as of 12:00 midnight prior to the delivery of the deed all non-delinquent taxes and assessments appearing on current tax bills computed on a fiscal year basis, and water and sewer charges, if any.

6. Seller's Deliveries. Seller shall deliver to Purchaser's attorney within 10 days after the full execution of this Contract the following items:

- (a) The existing binder for Title Insurance for the Property, if any such policy exists;
- (b) Copies of any and all environmental screens, assessments or reports for the Property, conducted by, or on behalf of Seller;
- (c) Copies of any and all real property tax receipts;
- (d) Copies of any and all billing statements for the Property; and,
- (e) Copies of all leases, options to purchase, easement agreements and rights of way which affect the Property.

7. Title Search, Survey and Title Objections. Seller shall deliver to Purchaser's attorney within sixty (60) days following the full execution of this Contract, a fully guaranteed tax and title search which covers the Property only, the first set-out of which shall be the first recorded source of title in the Erie County Clerk's office, or a deed to an apparent owner recorded prior to 1920 ("Title Search"), together with a survey of the Property dated subsequent to the date of this Contract, showing the Property and

the location of the structures and improvements, together with all easements and rights of way affecting it (the "Survey").

Purchaser shall have the right to examine title and to determine whether any easements, rights of way, restrictions, encumbrances or other matters affecting title would, in Purchaser's judgment, adversely affect Purchaser's ability to develop and use the Property, or render title unmarketable. If Purchaser objects to any matters disclosed in the Title Search or Survey, Purchaser shall, within the Inspection Period, notify Seller in writing specifying the objectionable matters. Seller may elect (but shall have no obligation) to attempt to cure any disapproved matter. If Seller cannot or elects not to cure any disapproved matter, Seller may elect to obtain an owner's title insurance policy in the amount of the purchase price at standard rates covering the disapproved matters naming the Purchaser as insured ("Owners Policy") at no additional cost or obligation to Purchaser. In such event Purchaser shall accept the Owners Policy, Seller shall pay the premium for the Owner's Policy. Notwithstanding anything to the contrary contained in this section, Seller shall be obligated to discharge any monetary liens affecting the Property at or prior to closing. In the event Seller is unable or unwilling to cure any disapproved matter during the Inspection Period and Seller is unable or unwilling to obtain an Owner's Policy insuring over the disapproved title matters, then Purchaser may at any time prior to the expiration of the Inspection Period (i) terminate this Contract by written notice to Seller, in which event the Initial Deposit shall be returned to Purchaser; or (ii) waive such title objection(s) and accept title to the Property subject thereto, in which event, there shall be no reduction in the purchase price. In the event Purchaser does not give Seller written notice of termination pursuant to this section prior to the expiration of the Inspection Period, then Purchaser shall be conclusively deemed to have waived any such objections to matters disclosed in the Title Search (or title insurance commitment, if applicable) and/or Survey.

8. Deed. At closing, Seller shall deliver to Purchaser a warranty deed with lien covenant.

9. Possession. Purchaser shall have possession of the Property from and after the date of delivery of the Deed.

10. Purchaser's Inspections & Conditions.

(a) Purchaser may, at Purchaser's expense, upon reasonable notice to Seller, at any time after the execution of this Contract by Seller and Purchaser, have inspectors, engineers, environmental consultants, contractors and/or other appropriate professionals enter upon the Property in accordance with and subject to the provisions of Section 11 hereof to conduct investigations to determine, without limitation, whether (i) the Property, in Purchaser's sole discretion, is in acceptable condition, and is appropriate and acceptable for Purchaser's intended uses; (ii) the Property is free of underground storage tanks, environmental contamination, pollution, hazardous conditions, and other environmental concerns; and (iii) the subsoil and other features of the property are appropriate and acceptable, in Purchaser's judgment, for Purchaser's intended uses.

(b) Purchaser shall have confirmed that (i) the Property is properly zoned to permit its intended uses; (ii) that no permits, authorizations, or approvals are required for Purchaser's intended uses; (iii) that the Property is otherwise suitable in all respects for Purchaser's intended purposes.

If, in Purchaser's sole discretion, the conditions are not satisfactory, Purchaser shall have the right to terminate this Contract by written notice to Seller within fifteen (15) days of the receipt of the deliverables set forth in paragraphs 6 and 7 (the "Inspection Period"). Upon receipt by Seller of such notice of termination, this Contract shall terminate, Purchaser shall be entitled to a refund of the Initial Deposit and neither party shall have any further rights or obligations pursuant to this Contract, except as otherwise herein expressly provided. In the event Purchaser does not give Seller written notice of termination pursuant to this section before the expiration of the Inspection Period, then Purchaser shall be conclusively deemed to have waived all of the conditions and shall proceed to Closing.

11. Purchaser's Right of Entry. Seller also hereby grants to Purchaser, its officers, employees, agents and contractors a temporary non-exclusive license to enter upon the Property during regular business hours, upon reasonable notice to Seller, for the purposes of inspecting, examining and conducting various tests which are required in order for Purchaser to fulfill the Conditions (the "Investigatory Work"), on the following terms, covenants and conditions:

(a) Compliance with Laws. Purchaser shall comply at all times with all applicable laws, rules, regulations, and ordinances pertaining to the performance of the Investigatory Work.

(b) Conduct of Investigatory Work; Restoration. Purchaser shall carry out any Investigatory Work on the Property in a good and workmanlike manner and with due and reasonable dispatch. In conducting the Investigatory Work, Purchaser shall not damage or interfere with any electric utility poles, towers, wires or other facilities or improvements which are located on the Property. Upon the earlier (i) the completion of such Investigatory Work or (ii) the termination of this Contract, Purchaser shall fully restore the Property to substantially the same condition which existed immediately before such Investigatory Work was undertaken. Purchaser's obligation to restore the Property shall survive the termination of this Contract.

(c) Indemnification. Purchaser hereby agrees to defend, indemnify and hold Seller and its successors and assigns harmless from and against any and all suits, causes of action, litigation, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements and expenses (including, without limitation, reasonable attorneys' fees) arising out of any claim or claims (whether asserted by Purchaser or any third parties, or any of their respective agents, employees or invitees) for bodily or other personal injury, death or property damage, directly connected with (i) the performance by Purchaser of the Investigatory Work, (ii) entry by Purchaser, its

employees, agents, or contractors onto the Property, and/or (iii) the failure of Purchaser to keep and perform any of the terms, conditions or covenants to be kept and performed by Purchaser in connection with the Investigatory Work.

12. Intentionally omitted.

13. Intentionally omitted.

14. Costs. Seller shall pay the cost of the Title Search and for the continuation of same to the time of closing, the cost of the Survey, the Real Estate Transfer Tax, the cost of filing Form TP-584, the premium for an Owner's Policy if required pursuant to Paragraph 6 of this Contract. All current fiscal years' taxes shall be prorated and adjusted as of 12:00 midnight prior to the date of closing, assessments and installments of amount appearing on current tax bills computed on a fiscal year basis. Purchaser shall pay the fee for recording the Deed and the cost of filing Form RP-5217.

15. Brokers. Seller and Purchaser represent and warrant to each other that they have not dealt with any broker, finder, or other intermediaries in connection with this Contract who or which might be entitled to a commission on account of the sale of the Property to Purchaser.

16. Closing & Closing Deliveries This Contract shall be closed at the Erie County Clerk's Office on or before the thirtieth (30<sup>th</sup>) day following expiration or waiver of the Inspection Period, or at such other time and place as Seller and Purchaser mutually agree upon.

At Closing, the Seller shall deliver to the Purchaser the following items:

(a) Deed. A warranty deed with lien covenant (the "Deed"), duly authorized, executed and acknowledged, conveying good and marketable, or insurable, fee simple title to the Property to Purchaser.

(b) Foreign Person. A certification of Seller certifying that Seller is not a "foreign person," in the form of attached hereto and made a part hereof, and any required tax affidavits.

(c) Title Company Requirements. Any affidavits or instruments reasonably required by the Title Company and contemplated pursuant to this Contract.

(d) Closing Statements. Closing statement reflecting all payments, prorations, charges, and costs of transfer.

17. Assignment. The Purchaser may assign this Contract of any of its rights hereunder without the prior written consent of the Seller.

18. Notices. Any notice permitted or required to be given by the terms of this Contract shall be in writing and shall be sufficiently given if hand delivered, sent by nationally recognized overnight courier service (such as Federal Express or United Parcel Service) or sent by certified mail, return receipt requested, as follows:

If to Seller: Jane Michalek Harrington, Esq.  
300 Center Road  
West Seneca, New York 14224

If to Purchaser: John J. Fenz, Esq.  
3755 Seneca Street  
West Seneca, NY 14221

Notices given pursuant to this section shall be deemed to have been received (a) if personally delivered, upon delivery; (b) if sent by nationally recognized overnight courier service, one business day after sending; or (c) if sent by certified mail, three (3) business days after the notice was mailed. Either party may, by written notice given in accordance with this section, designate a different address or addresses to which such notices shall be sent. Notices given on behalf of either party by the attorney for such party shall have the same force and effect as notices given by the party itself.

19. Default. If, without fault on the part of Seller, Purchaser should fail to consummate its purchase of the Property in accordance with this Contract, Seller's sole remedy shall be to retain the Deposit(s) paid by Purchaser hereunder.

If, without fault on the part of Purchaser, Seller should fail to consummate its purchase of the Property in accordance with this Contract, Purchaser shall have the right to pursue against Seller all other legal remedies available to Purchaser.

20. Warranties and Representations of Seller. Seller represents and warrants to Purchaser to the best of Seller's knowledge as follows:

A. Other than disclosed in the Title Search and Survey, there are no easements or rights-of-way which affect the Property;

That other than disclosed to the Purchaser, there are no service contracts or agreements which affect the Property;

B. That the Seller has received no written notice that the Property is in violation of any federal, state and municipal laws, rules, regulations, ordinances and codes (collectively "Laws"), including all Laws relating to land use and the environment.

- C. There are no condemnation, zoning or other proceedings either instituted, or to Seller's best knowledge threatened, which affect the Property;
- D. That there are no options to purchase, or rights of first refusal, relating to the Property;
- E. Seller is duly organized, validly existing, and in good standing under the laws of the State of New York;
- F. Seller has the full power and authority to execute, deliver and perform its obligations under this Contract;
- G. This Contract and all agreements, instruments and documents herein provided to be executed by Seller are and as of the date of closing will be duly authorized, executed and delivered by and are and will be binding upon Seller.

Each and every warranty and representation shall be true as of the date hereof and as of the date of closing and shall survive delivery of the deed and closing of this Contract for a period of one (1) year. Each and every warranty and representation is included for the exclusive benefit of Purchaser and may be waived or removed in full or in part by Purchaser. If any of the warranties or representations are untrue at any time while this Contract is in effect, Purchaser may waive any rights arising therefrom and proceed with the closing or Purchaser may terminate this Contract by giving written notice to Seller, whereupon the Deposit shall be promptly returned to Purchaser.

21. Escrow. The Initial Deposit shall be held in escrow by the Escrow Agent in IOLA escrow account. At no time shall the Initial Deposit be the property of the Escrow Agent. At closing, the Initial Deposit shall be paid by the Escrow Agent to Seller or to any other payee identified by Seller. If this Contract is canceled pursuant to any provision hereof, the Initial Deposit shall be returned to the Purchaser.

22. Signatures. This Contract shall not become effective unless signed by both Seller and Purchaser, subject to the approval of the Town of West Seneca Town Board, on or before December 31, 2015.

23. Miscellaneous.

(a) Successors and Assigns. The terms, covenants, conditions and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns (to the extent assignment is permitted hereunder).

(b) Entire Agreement. This Contract, including its schedules and/or exhibits, constitutes the entire agreement between Seller and Purchaser relating to the within transaction, and is intended to supersede any prior agreements between the parties with respect to the sale of the Property.

(c) Modification. This Contract shall not be amended, modified, supplemented, or revoked, except by a writing signed by Seller and Purchaser.

(d) Submission Not an Offer. This submission by either party to the other of contract drafts, or of other proposals, correspondence or materials related to the proposed sale of the Property shall not be deemed to create an enforceable contract, neither party shall be bound to the other unless and until this formal Contract of Sale has been fully executed by both Seller and Purchaser, as herein provided.

(e) Captions. The captions contained in this Contract are for convenience only, and are not intended to limit or amplify the terms hereof in any way.

(f) Construction. Any ambiguity in this Contract shall not be construed against the Purchaser, of the drafter of the Contract.

(g) Counterparts. This Contract may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(h) Invalidity. If any clause, provision or section of this Contract shall be ruled invalid by any court having jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**IN WITNESS WHEREOF**, Seller and Purchaser have executed or caused this Contract to be executed as of the day and year first above written.

**SELLER:**  
**Michael Serafini, Inc.**

**PURCHASER:**  
**Town of West Seneca**

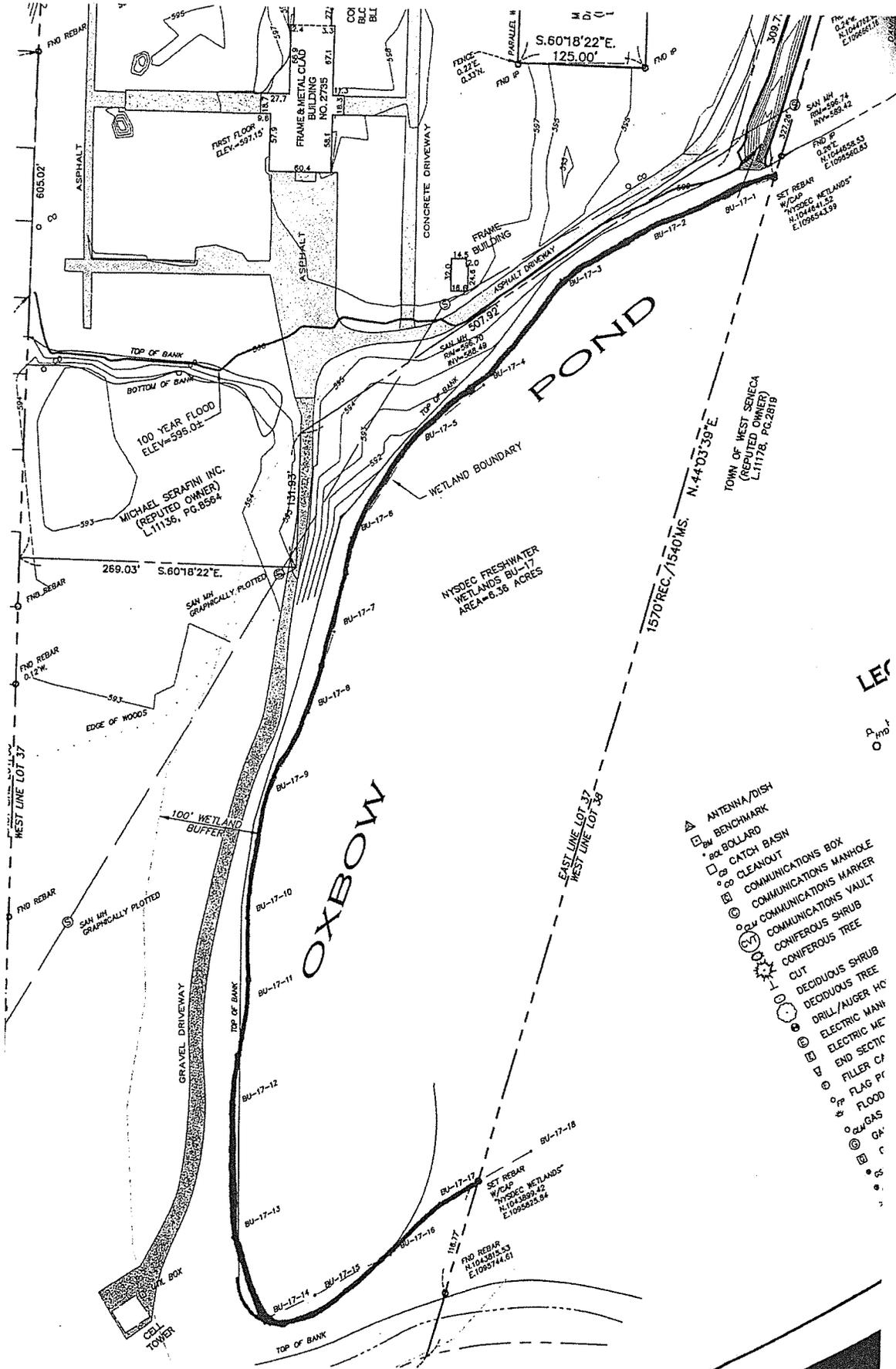
\_\_\_\_\_  
**By:**  
**Its:**

\_\_\_\_\_  
**Sheila Meegan**  
**Town Supervisor**

**Date:**\_\_\_\_\_

**Date:**\_\_\_\_\_

# CLINTON ST.



- LEG**
- ANTENNA/DISH
  - BENCHMARK
  - BOLLARD
  - CATCH BASIN
  - CLEANOUT
  - COMMUNICATIONS BOX
  - COMMUNICATIONS MANHOLE
  - COMMUNICATIONS MARKER
  - COMMUNICATIONS VAULT
  - COMMUNICATIVE SHRUB
  - CONIFEROUS TREE
  - CUT
  - DECIDUOUS SHRUB
  - DECIDUOUS TREE
  - DRILL/AUGER HOLE
  - ELECTRIC MANHOLE
  - ELECTRIC MET
  - END SECTION
  - FILLER CAP
  - FLAG POLE
  - FLOOD
  - GAS
  - GA
  - GR
  - IR
  - IS

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, entered into this ~~14~~ day of December, 2015, by and between the Town of West Seneca, New York (the "Town"), a municipal corporation organized and existing under the laws of the State of New York, with offices located at 1250 Union Road, West Seneca, New York, and the West Seneca Chamber of Commerce, Inc. (the "Chamber") a not-for-profit corporation organized and existing under the laws of the New York, with offices located at 950-A Union Road, West Seneca, New York.

WHEREAS, the Town recognizes that it requires professional services to plan, organize, coordinate and implement a variety of economic development related operations; and

WHEREAS, the Chamber's statement mission is consistent with the Town's vision to promote economic development in the Town; and

WHEREAS, the Town desires to enhance continued efforts to expand its tax base for the benefit of the taxpayers by enlisting the services of a community economic development coordinator; and

WHEREAS, the Chamber possesses a variety of professional and technical skills to provide support to the Town by providing services to plan, organize, coordinate and implement a variety of economic development related operations.

NOW THEREFORE, the Town and the Chamber, for and in consideration of the mutual promises and undertakings herein set forth, agree as follows:

### 1. SERVICES TO BE RENDERED; FIXED COST CONTRACT

1.1 Services of the Chamber: The Chamber agrees to perform that work and those services identified and more particularly described as follows:

- a.) Maintain office hours;
- b.) Attend scheduled manager meetings with the Erie County Industrial Development Agency (the "ECIDA");
- c.) Actively solicit businesses to locate within the Town's boundaries;
- d.) Assist West Seneca businesses interested in relocation or expansion within the Town;
- e.) Act as a liaison between the ECIDA and West Seneca businesses;
- f.) Inform and educate West Seneca businesses about the ECIDA programs and other economic development programs;
- g.) Participate in community development activities;
- h.) Work in conjunction with the Town Code Enforcement Office and the Town Attorney to assist businesses with understanding the various Town approval processes.

- 1.2 Fixed Cost Contract: This is a fixed cost contract. The cost shall not exceed, unless approved by an amendment, **FIFTEEN THOUSAND DOLLARS (\$ 15,000.00)**.
- 1.3 Quarterly Reports: The Chamber shall provide the Town with a quarterly report of its services, and at the request of the Town, shall meet with its representatives to review ongoing initiatives and progress.

## 2. COMMENCEMENT; TERM

- 2.1 Commencement Date: Performance of Services shall begin on January 1, 2016.
- 2.2 Term: The Term of this Agreement shall be from January 1, 2016 through December 31, 2016.

## 3. PERSONNEL

- 3.1 Personnel: The Chamber represents that it has, or will secure at its own expense, all professionally qualified personnel required to perform the services outlined in this Agreement.
- 3.2 Chamber's Status as Independent Contractor: The Chamber and its personnel shall not be employees of the Town for any purpose. The Chamber shall have sole responsibility to employ, supervise and pay such employees, professionals, subcontractors and subconsultants as are necessary for the efficient performance of this Agreement. Under no circumstances shall the Town be responsible for any employee, professional, principal, subcontractor or subconsultant of the Chamber for the payment of wages, fees, taxes, withholding, workmen's compensation, unemployment insurance, or any other form of remuneration that would signify an employer/employee relationship between the Town and the Chamber or any employee, professional, principal, subcontractor or subconsultant of the Chamber.

## 4. TERMINATION FOR CAUSE

- 4.1 Events of Default: Any one or more of the following acts or omissions by the Chamber shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):
  - a. Failure to perform or complete any of the Services as scheduled or as required by this Agreement;
  - b. Failure to maintain the records required hereunder or to permit access thereto;

- c. Failure in the performance of any of its remaining obligations hereunder or a default in any of the other covenants and conditions of this Agreement;

4.2 Termination: Upon the occurrence of any Event of Default, the Town shall thereupon have the right to terminate this Agreement by giving written notice to the Chamber of such termination and specifying the effective date thereof at least fourteen (14) days before the effective date of such termination. In such event, the Chamber shall refund the Town with a pro-rata share of the fixed cost paid pursuant to the terms of this Agreement.

## 5. RECORDS AND AUDITS

The Chamber shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Agreement. These records shall be made available for inspection and audit purposes to the Town. The Chamber shall preserve all such records for three years after the expiration of this Agreement.

## 6. AMENDMENTS

The Town may request changes in the services to be performed hereunder by the Chamber. Such changes shall be mutually agreed upon by and between the Town and the Chamber, shall be incorporated in written amendments to this Agreement.

## 7. ASSIGNABILITY

The Chamber shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without the prior written consent of the Town.

## 8. WAIVER OF BREACH

No Waiver by the Town of its right to enforce any provisions hereof after any default on the part of the Chamber shall be deemed a waiver of its right to enforce each and all of the provisions hereof upon any further or other default on the part of the Consultant.

## 9. PAYMENT

Payment under this Agreement shall be made to the Chamber by the Town upon execution of this Agreement by both parties.

10. INDEMNIFICATION

The Chamber will defend, indemnify, save harmless and exempt the Town and its subcommittees and elected officials, its staff and all their officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorney's fees incident to any work done in the performance of this Agreement arising out of a willful or negligent act or omission of the Chamber, its officers, agents, subconsultants, servants, or employees: provided however, that the Chamber shall not be liable for any suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorney's fees arising out of a willful or negligent act or omission of the Client, its offices, agents, servants and employees, or third parties.

11. SEVERABILITY

Should any provision in any section of this Agreement be found to be illegal or otherwise unenforceable, all other provisions and sections of this Agreement shall remain in full force and effect.

TOWN OF WEST SENECA

By: \_\_\_\_\_

Title: \_\_\_\_\_

WEST SENECA CHAMBER  
OF COMMERCE, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**AGREEMENT FOR PURCHASE AND SALE OF  
STREET LIGHTING FACILITIES**

**THIS AGREEMENT** made between NEW YORK STATE ELECTRIC & GAS CORPORATION (NYSEG), a New York corporation having its principal place of business at 89 East Ave, Rochester, New York 14649 and the TOWN OF WEST SENECA (the Town), a municipal corporation of the State of New York organized under the General Municipal Law and having its principal office located at 1250 Union Road, West Seneca, NY 14224.

**WITNESSETH:**

**WHEREAS**, NYSEG owns and has for many years operated and maintained a system of street lighting poles, luminaires and lamps, mast arms, electrical connections and wiring for street lighting installed throughout the Town limits, which facilities are currently installed are hereafter collectively described as the “Facilities”, and

**WHEREAS**, the Town desires to purchase the Facilities and NYSEG is agreeable to selling the same;

**NOW, THEREFORE**, in consideration of the mutual covenants herein expressed and other valuable consideration, the sufficiency of which they hereby acknowledge, NYSEG and the Town agree as follows:

1.     **Sale of Facilities**

Subject to the terms expressed below, NYSEG agrees to sell to the Town, and the Town agrees to purchase from NYSEG, all NYSEG’s right, title and interest in the Facilities. An inventory of the Facilities is set forth in Schedule A, which is attached hereto and made a part hereof. While NYSEG believes Schedule A to be accurate and complete, it may or may not represent the Facilities in its entirety. The parties hereto acknowledge that it is the intent of this Agreement to transfer all of the Facilities to the Town, regardless of whether it is accurately described in Schedule A, and the future invoices for service to the Facilities shall be based upon Schedule A.

2.     **Contents of the Facilities**

The Facilities consists of street lighting poles, luminaires and lamps, mast arms, their associated wiring, electrical connections and appurtenances related to the electrical functioning of the Facilities, all as reflected in Schedule A. The Facilities are a separate system isolated, or to be isolated as hereinafter provided, from the NYSEG distribution system at a number of fuses or switching locations known as disconnect points.

3. **Purchase price**

The purchase price shall be \$804,866, which represents the fair market value of the Facilities, plus any accrued taxes as set forth in Section 13. The closing shall occur on a date mutually agreeable to the parties hereto but in no event more than 30 days after NYSEG has given the Town written notice that it has obtained all approvals set forth below. At closing, payment shall be made in full by wire transfer to an account designated by NYSEG or by delivery of a certified bank check, without deduction, set-off or counterclaim.

4. **Operability of the Facilities**

NYSEG has maintained, and currently maintains, the operability of the Facilities in a manner consistent with filed tariff PSC No. 121 – Schedule for Electric Service Street Lighting. Until the closing, NYSEG shall continue its regular program of operating and maintaining the Facilities.

5. **Transfer of the System**

The official transfer of the Facilities shall be deemed to occur as of the closing date. NYSEG represents and warrants to the Town that NYSEG is the absolute owner of the Facilities free and clear of all liens, charges and encumbrances save only the. At the closing, all right, title and interest to and in the Facilities shall vest in the Town and the Town shall thereafter be solely responsible and liable for the operation, maintenance and condition of the Facilities, except as set forth herein to the contrary.

6. **System Isolation**

- a) The Town, at its sole cost, shall isolate the Facilities from the NYSEG electric distribution system as more fully described below. The Town shall perform isolation work by qualified Town employees or employ a contractor acceptable to NYSEG to complete the isolation work. NYSEG's acceptance of the contractor retained by the Town shall not be deemed to be an endorsement of the contractor's qualifications to perform the isolation work, nor shall NYSEG, by its acceptance of the contractor, assume any liability for claim, third-party or otherwise, that may arise from the performance of the isolation work.
- b) The isolation work shall utilize fuses and/or switching/disconnect locations in accordance with the National Electric Safety Code, all applicable safety laws, regulations and standards, the applicable NYSEG electric service tariff and the design standards, processes and procedures deemed appropriate by NYSEG.
- c) The isolation work shall be completed within twenty four (24) months after the date of the closing. If the isolation work has not been completed within this time period, NYSEG shall complete the isolation work and bill the Town for all costs associated

with NYSEG's performance of the isolation work in accordance with applicable provisions of the relevant tariff.

- d) The Town shall provide ownership identification of its equipment per the requirements of PSC No. 121, Service Classification No. 4.

7. **Pole Attachment Agreement**

The Town shall enter into a Pole Attachment Agreement with NYSEG which specifies the terms and conditions under which the Town may attach streetlight facilities to NYSEG poles and perform maintenance work on such facilities. The Pole Attachment Agreement must be fully executed by both parties prior to closing.

8. **Service Classification**

Upon closing, service for all Facilities sold to the Town will be transferred from PSC No. 121, Service Classification No. 3 to PSC No. 121, Service Classification No. 4.

The Town also agrees to isolate any Town owned streetlight facilities in accordance with Section 6 above served under PSC No. 121, Service Classification No. 2. Service for these facilities will be transferred to PSC No. 121, Service Classification No. 4 as of the closing date of the sale.

9. **Limitation of Warranty**

- a) **THE FOREGOING REPRESENTATIONS AND WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATION ON THE PART OF NYSEG. THE FACILITIES ARE SOLD TO THE TOWN "AS IS" AND "WITH ALL FAULTS".**
- b) Commencing upon the transfer of the Facilities, the Town shall neither have nor bring any claim, proceeding or action against NYSEG for damages which it or its contractors or employees sustain, directly or indirectly, by reason of property damage, personal injury or death arising from the Facilities, its components, or the operation or non-operation of such Facilities and components, save only claims for failure of title under Section 5 above.

10. **Risk of Loss**

The risk of loss shall be on NYSEG until the closing, at which time the Town shall assume all risk of loss of the Facilities and its components.

11. **Indemnity**

The Town shall indemnify and hold harmless NYSEG from and against all claims, damages, costs, penalties, suits and fees (including reasonable attorneys' fees) (collectively, "Claims") to the degree such Claims arise from (1) any use of, or work performed on, the Facilities by the Town or its employees, contractors or agents, either prior to or after the closing date, or (2) the operation and/or maintenance of the Facilities after the closing date.

12. **Approvals**

This Agreement shall be subject to Approval of the sale by the New York State Public Service Commission in the form of this Agreement.

NYSEG and the Town shall use their best efforts to secure this approval in an appropriate form and timely fashion and to have the same available in time for the scheduled closing.

13. **Taxes**

NYSEG shall pay real property or special franchise taxes applicable to the Facilities up to the time of closing. The Town shall be responsible for all taxes for periods thereafter.

14. **Notices**

Except as otherwise provided herein, any notice to NYSEG hereunder shall be directed to:

Jeffrey Rosenbloom – Managing Attorney  
New York State Electric & Gas Corporation  
89 East Avenue  
Rochester, NY 14649

Any notice to the Town hereunder shall be directed to:

Sheila Meegan  
Town Supervisor  
Town of West Seneca  
1250 Union Road  
West Seneca, NY 14224

15. **Survival**

Any and all undertakings set forth in this Agreement are intended to and shall survive the closing.

16. **Amendment**

Any amendment of this Agreement shall be in writing and signed by authorized representatives of NYSEG and the Town.

17. **Easements**

To the extent permitted by law, and subject to the reservation contained herein, NYSEG hereby assigns to the Town any rights NYSEG may have under any easement grants that encumber real property upon which any of the Facilities are located and that directly affect the ability of the Town to own and operate the Facilities. NYSEG hereby reserves any and all rights NYSEG may have under any easement grants to the extent such easement grants NYSEG the right to install, maintain, relocate, upgrade, operate, repair and/or replace any facilities other than the Facilities, including, but not limited to, gas distribution and transmission facilities. The Town shall defend, indemnify and hold NYSEG harmless from and against any and all claims, suits, losses, damages, expenses and/or costs that arise out of any obligations under the easement grants that relate to the Facilities. This assignment constitutes a quit claim transfer of any rights NYSEG may have under any easement grants, which rights are being assigned without any warranties whatsoever. Both parties shall execute any and all documents reasonably necessary to give full force and effect to this provision.

18. **Confidentiality**

Except as, and to the degree, required by law, regulation, order of a governmental authority or order of a court, or upon written consent of the other party, the Town and NYSEG, and their respective agents, employees, officers, directors, trustees and attorneys, shall keep and maintain this Agreement and all terms and provisions hereof in strict confidence during the term hereof and shall not transmit, reveal, disclose, or otherwise communicate the substance or any of the terms or provisions of this Agreement to any other person. In the event that the terms of this Agreement are required to be produced in any judicial or administrative proceeding or audit by a governmental agency, NYSEG and the Town shall each use commercially reasonable efforts to obtain a protective order or agreement in a form satisfactory to both parties before disclosing any of the terms hereof. If disclosure is so required, no consent shall be required, but notice of such disclosure shall be given to the other party prior to such disclosure, or as soon thereafter as possible. No party shall be required to exercise a higher degree of care than exercised with respect to its own proprietary information.

19. **Entire agreement**

This Agreement represents the entire Agreement between NYSEG and the Town with respect to the sale and purchase of the Facilities. This Agreement supersedes all contemporaneous and prior writings between NYSEG and the Town with respect to the sale and purchase of the System.

20. **Headings**

The headings of the sections of this Agreement are inserted for convenience only and are not intended to be weighed in construing its meaning.

IN WITNESS WHEREOF, NYSEG and the Town have executed this Agreement as of the dates written opposite their respective officers' signatures.

NEW YORK STATE ELECTRIC & GAS CORPORATION

\_\_\_\_\_, 2012

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NEW YORK STATE ELECTRIC & GAS CORPORATION (Control Signature)

\_\_\_\_\_, 2012

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TOWN OF WEST SENECA

\_\_\_\_\_, 2012

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK )  
 : SS.:  
COUNTY OF ERIE )

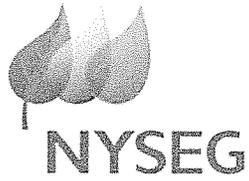
On the \_\_\_\_ day of \_\_\_\_\_, 2015, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he resides in: \_\_\_\_\_, that he is \_\_\_\_\_ of New York State Electric & Gas Corporation, the corporation described in and which executed the above instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 : SS.:  
COUNTY OF ERIE )

On the \_\_\_\_ day of \_\_\_\_\_, 2015, before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn, did depose and say that he resides in: \_\_\_\_\_, that he is \_\_\_\_\_ of Town of West Seneca, the municipal corporation described in and which executed the above instrument; and that he signed his name thereto by virtue of the statutes of the State of New York.

\_\_\_\_\_  
Notary Public



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**STREET LIGHTING POLE ATTACHMENT AGREEMENT**

**BETWEEN**

**NEW YORK STATE ELECTRIC & GAS CORPORATION**

**AND**

**TOWN OF WEST SENECA**

**Dated: SEPTEMBER 22, 2014**

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## STREET LIGHTING POLE ATTACHMENT AGREEMENT

THIS AGREEMENT, made as of the 22nd day of September, 2014 between NEW YORK STATE ELECTRIC & GAS, (hereinafter designated as “NYSEG”) a corporation organized and existing under the laws of the State of New York, having an office at 89 East Avenue, County of Monroe, State of New York, and The Town of West Seneca and having an office at 1250 Union Road, West Seneca, NY 14224, hereinafter called “Licensee”. NYSEG and the Licensee are collectively referred to herein as the “Parties” or individually as a “Party.”

### WITNESSETH:

WHEREAS, Licensee for its own use desires to attach and maintain its streetlight equipment, facilities and attachments with necessary guys and appurtenances on NYSEG Poles.

WHEREAS, NYSEG is willing to permit, to the extent it may lawfully do so, the placement of said streetlight equipment, facilities and attachments on its Poles as specified herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the parties do hereby mutually covenant and agree as follows:

### ARTICLE I DEFINITIONS

As used in the Agreement:

Section 1.01 “Applicable Laws” mean the Communications Act of 1934, as amended (47 U.S.C. §224 et seq.) and any and all implementing legislation, the law of New York State, including, without limitation, the High Voltage Proximity Act, New

York Public Service Commission regulations, rules, and orders, and Federal Communications Commission regulations, rules, and orders now in effect or as may hereafter be modified or amended to the extent the same relate to pole attachments. Nothing in this definition shall be construed as to limit or affect in any way the Governing Law provisions set forth in Article XI of this Agreement.

Section 1.02 “Attachment” means any of the following:

- Equipment mounted in the usable space which precludes that space from being utilized by a single messenger span wire facility. Each preclusion will be counted as a separate attachment.
- Equipment mounted in non-usable or other than usable space which precludes that space from being utilized by NYSEG, a Joint User or another third party.

Section 1.03 “Facilities” means streetlight facilities and wires.

Section 1.04 “Joint Owner” means any other public utility which shall now or thereafter have joint or shared ownership of any of NYSEG’s Poles. The term “Joint Owner” shall not include the Licensee.

Section 1.05 “Joint User” means any public utility or municipality or any subdivision or agency thereof which shall now or hereafter have the right to use any of Licensor’s poles. The term “Joint User” shall not include licensees with limited attachment rights such as those accorded Licensee hereunder.

Section 1.06 “Licensee” shall mean any person, other than a Joint User, who now or hereafter has any attachment or other rights with respect to Licensor’s occupying of said poles.

Section 1.07 “Licensee’s Facilities” means the Facilities and all associated equipment and hardware installed for the sole use of the Licensee.

Section 1.08 “Make Ready Work” shall mean all work necessary to accommodate proposed attachments of Licensee including but not limited to pre-construction surveys and rearrangements or changes in the Facilities of Licensor, Joint Users or other licensees.

Section 1.09 “Other Than Usable Space” means that space other than the Usable Space (the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment) on a pole.

Section 1.10 “Pole Attachment” means any of Licensee’s Facilities in direct contact with or otherwise supported by a utility pole, duct, conduit, or right-of-way owned or controlled, wholly or partially, by NYSEG.

Section 1.11 “Rental”, “Rental Fees” and “Pole Rental” means the Pole Attachment Charge as defined in NYSEG’s Streetlight Tariff.

Section 1.12 “NYSEG’s Poles” or “Poles” means poles wholly or partially owned by NYSEG.

Section 1.13 “Usable Space” means the total space on the utility pole above the minimum grade level that is usable for the attachment of wires, cables, and related equipment.

## **ARTICLE II GENERAL PROVISIONS**

(a) Scope of rights. The right granted pursuant to this Agreement to attach and maintain Licensee Facilities is to be exercised by the Licensee subject to any and all governmental regulations now or hereafter in force, and in such manner as shall not

interfere with NYSEG's use and maintenance of NYSEG's Poles, wires and property thereon.

(b) No assignment. The Licensee shall not in any way assign, transfer, sublet, or encumber this Agreement, nor any of the rights or privileges hereby granted by it, without the prior written consent of NYSEG, which consent shall not be unreasonably withheld or delayed. Any attempted assignment, transfer, sublease, or encumbrance without such prior written consent is void. Moreover, prior written notice to NYSEG, in addition to NYSEG's prior written consent, will be required when management control of Licensee or Licensee's Facilities is changed. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the parties hereto. In addition, the Licensee shall not, in any manner, extend any of the rights or privileges to access, install, and/or maintain its Facilities on NYSEG's Poles granted under this Agreement to any other entity, affiliated or otherwise, without the prior written consent of NYSEG.

(c) Notices. All notice required under this Agreement, other than "Insurance Notification" in Article IX, shall be made pursuant to this Section. Notice under this Agreement must be in writing and effective at least ten days before the action or nonaction by NYSEG. Notices are effective upon receipt.

Notice should be sent to the following addresses:

For NYSEG: Robert Perkins  
RG&E / NYSEG  
NY Customer Service, Joint Use of Plant  
89 East Avenue  
Rochester, New York 14649  
585-724-8556  
robert\_perkins@rge.com

Copy to: Jeffrey Rosenbloom  
Managing Attorney and Assistant Secretary  
NYSEG/RG&E  
89 East Avenue  
Rochester, New York 14649

For Licensee: Sheila Meegan  
Town Supervisor  
Town of West Seneca  
1250 Union Road  
West Seneca, NY 14224  
716-558-3202  
smeegan@twсны.org

And copy to:

(d) No prior agreements. This Agreement supersedes all previous agreements between the parties for attachment of Licensee's Facilities to NYSEG's Poles.

(e) No ownership. No use, however extended, of NYSEG's Poles or payment of any fees or charges required under this Agreement shall create or vest in Licensee any ownership or property rights in NYSEG's Poles or anchors, and Licensee's rights therein shall be or remain a mere license. Nothing herein contained shall be construed to compel NYSEG to construct, retain, extend, place or maintain any Facilities not needed for its own service requirements, except for rearrangements and replacements covered under Article VII of this Agreement.

It is recognized by the Licensee that NYSEG has heretofore entered into, or may in the future enter into, agreements and arrangements with others not a party to this Agreement regarding the Poles covered by this Agreement. Nothing herein contained shall be construed as a limitation, restriction or prohibition against NYSEG with respect to such other agreements and arrangements. The attachment privileges herein granted shall at all times be subject to such agreements and arrangements.

(f) No waiver. Failure to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

(g) Severability. If any provision of this Agreement is unenforceable under any applicable law or is held invalid, such shall not affect any other provision hereof, and this Agreement shall be construed as if such unenforceable or invalid provision had never been contained herein.

### **ARTICLE III APPLICATION FOR PERMISSION TO ATTACH**

Forty-five (45) days prior to when the Licensee wishes to make attachments to NYSEG's Poles, the Licensee shall make written application to their respective NYSEG Streetlight Representative, by means of the Streetlight Request Form marked "Exhibit A" or superseding versions, attached hereto, specifying the type of Facility and the location of the Poles. NYSEG will indicate its approval by returning one copy of the Streetlight Request Form to the Licensee bearing its written consent. This written consent will be designated as a "License."

### **ARTICLE IV RENTAL AND OTHER CHARGES**

For attachments of Licensee's Facilities to NYSEG's Poles, the Licensee shall pay NYSEG rental and other charges as follows:

(a) Billing Periods: For the attachment of Licensee's Facilities, a Monthly Pole Attachment Charge, per mast arm, will be charged as defined in NYSEG's Streetlight Tariff.

(b) Periodic Inspections and Surveys: If, as a result of a periodic inspection, it is determined that the Licensee has made unauthorized attachments to NYSEG's Poles, the Licensee shall pay NYSEG back rental from the time the attachment was made. If the time of attachment cannot be determined, the Licensee shall pay NYSEG an amount equal to the annual rate times the number of years since the last periodic inspection, up to a maximum of five years. Periodic inspections, at the Licensee's expense, may be performed every five years or less frequently at NYSEG's discretion. More frequent inspections may be performed if the Licensee's performance does not meet prescribed regulatory thresholds. If it is found that Licensee's attachments do not meet the standards outlined in Article V of this Agreement, then NYSEG may, at its option, conform the attachments and Licensee is liable for all costs incurred relating to such conforming, notwithstanding the notice provision of Article V(a) of this Agreement.

NYSEG reserves the right to make periodic surveys and inspections of all or any part of Licensee's Facilities on NYSEG's Poles and of any other facilities in the vicinity of Licensee's Facilities at the expense of Licensee.

(c) Make-Ready: Work required to be performed prior to, and because of, attachment of Licensee's Facilities, including, but not limited to the pre-construction survey, rearrangement of existing equipment, guying and anchoring, pole replacements, construction inspections, and post construction inspections shall be referred to as Make-Ready. Similar work required after initial attachment to a pole shall be referred to as Additional Make-Ready. Make-Ready shall be billed, and must be paid prior to the commencement of work on individual Poles. When NYSEG employs an outside contractor rather than its own work forces to perform Make-Ready, Licensee shall pay an

amount equal to the contractor's fees plus an administration fee to cover the cost of supervision, accounting, and support services. NYSEG shall make available copies of all written contracts, agreements, understandings, and work orders pertinent to Make-Ready work.

(d) Billing Due Dates: Unless otherwise indicated by NYSEG, all bills for rental and other charges are payable by the Licensee within by the due date indicated on the bill. In the event Licensee fails to pay an amount due within the period of time set forth for payment, interest shall accrue on the unpaid balance at the rate of one and one-half percent (1 ½%) per month for each month starting from the expiration of such period until payment is received.

#### **ARTICLE V SPECIFICATIONS**

(a) Codes and Rules: The Licensee, its agents, employees, servants and contractors, must meet all requirements of the National Electrical Safety Code (NESC), the Occupational Safety and Health Administration (OSHA), NYSEG Standards marked "Exhibit B" or superseding versions, attached hereto, NYSEG and other relevant safety standards for proper bonding, grounding, clearances, guying, anchoring and installing of Licensee's Facilities. The Licensee, its agents, employees, servants and contractors must also meet all local licensing requirements. If Licensee's attachments do not conform to these requirements, NYSEG may require the Licensee to correct the condition and if the Licensee does not do so after three (3) months notice, or such other time period specified in the notice, NYSEG may perform the work and the Licensee is liable for all costs thereto. NYSEG may, at its option, correct the condition without prior notice to Licensee, and Licensee is liable for all costs thereto. NYSEG reserves the right, at all

times, to specify the type and methods of design, construction and maintenance of Licensee's attachments on NYSEG's Poles.

(b) Inspections: NYSEG may require the Licensee to advise it, on a day-to-day or week-to-week basis, of the exact locations where Licensee's Facilities are being constructed. NYSEG may conduct frequent inspections of Licensee's construction in progress in lieu of or in addition to traditional post-construction surveys, and at the Licensee's expense. The costs may be included as part of the Make-Ready billing.

(c) Pole Tagging: Each of the Licensee's Facilities shall be tagged at each of NYSEG's Poles in such a manner as, as approved by NYSEG, to allow identification of the ownership of such Facilities.

(d) Equipment: Prior written permission must be granted by NYSEG and Joint Owners before the Licensee may attach any equipment to NYSEG's Poles. NYSEG and Joint Owners will determine if the poles are of suitable strength to accommodate the Licensee's equipment. Requests for such permission, and notice of such permission or denial of permission, must be done in accordance with Article III of this Agreement.

(e) Existing Street Light Assets: The location of the existing mast arms included in the sale of street light assets to the Town of West Seneca will be grandfathered. If the mast arm of a grandfathered location is removed and reinstalled, the reinstalled mast arm must comply with the clearances found in Exhibit B, Section 4.0 of the Energy Only standards, or superseding issues thereof. A mast arm installed at any location that is not grandfathered must also comply with the clearances found in Section 4.0 of the Energy Only standards, or superseding issues thereof.

## **ARTICLE VI GOVERNMENTAL AUTHORITY AND EASEMENTS**

(a) Governmental Authority: Before making any attachments to NYSEG's Poles, the Licensee must obtain any necessary permits or consents from federal, state, and/or municipal authorities and shall comply with all laws, rules and regulations. No guarantee is given by NYSEG of permission by municipalities or others respecting the use of its Poles by the Licensee.

(b) Easements: Where NYSEG has an easement over a public or private right-of-way sufficiently broad under New York State law to permit streetlight attachments, Licensee shall not be required to obtain independent permission of the property owner to attach. Upon request NYSEG shall make available to Licensee copies of all relevant recorded easements, with the Licensee bearing the cost of providing such information. Where NYSEG seeks to obtain any necessary permission from a property owner for Licensee's attachments, the fully allocable costs of such efforts shall be paid by the Licensee. Moreover, the Licensee will exercise due care when upon landowners property, and take reasonable steps to inform landowners prior to making any attachments to or tree trimming around NYSEG's Poles. No guarantee is given by NYSEG of permission by property owners respecting the use of any easement.

## **ARTICLE VII INITIAL REARRANGEMENTS AND POLE REPLACEMENTS**

(a) Make-Ready Defined: Upon receipt of an application for a pole license, NYSEG will determine the approximate cost of performing the pre-construction engineering, and upon receipt of payment by Licensee, will make appropriate surveys of

the Poles listed with a representative of the Licensee, Joint Owner, and any other third parties. NYSEG shall determine, among other things, whether, in order to accommodate the attachments of the Licensee, any rearrangements or changes are necessary in NYSEG Facilities or of other Joint Owners or other third parties with attachment rights. In addition, the joint survey shall determine whether any Poles require strengthening (guying and anchoring), whether any Poles require replacement, and whether the Licensee's strand and equipment need to be bonded or grounded to NYSEG Facilities or other users. All such work and other work required in connection with accommodating Licensee's Facilities, including preconstruction engineering and a post-construction inspection, will be considered as Make-Ready work.

(b) Make-Ready Billing: After completion of the pre-construction engineering, NYSEG will render a bill to the Licensee for all Make-Ready work to be performed. The Licensee shall pay the bill before commencement of the Make-Ready work. Licensee is liable for additional costs related to the Make-Ready work incurred by NYSEG, notwithstanding any prior billing or Make-Ready work already done by NYSEG.

(c) Make-Ready Timing: NYSEG will meet a reasonable schedule for the performance of Make-Ready work, subject to sixty (60) days notice and further subject to the primary priority of power delivery service obligations. If large or multiple applications are received from the Licensee or Licensees, requiring more Make-Ready work than can be reasonably handled by the operating office, then NYSEG shall endeavor to allocate its available work forces, as far as practical, to accommodate the needs of the Licensee or of other Licensees. Once Make-Ready work has been

completed, NYSEG will inform the Licensee, Joint Owner and any other third parties. Applicable Licenses will then be issued.

#### **ARTICLE VIII POLE RELOCATIONS AND REPLACEMENTS**

It is the responsibility of the Licensee to relocate, replace or transfer its Facilities in accordance with NYSEG's Streetlight Tariff.

#### **ARTICLE IX INDEMNIFICATION, INSURANCE AND LIABILITY**

(a) **Damage to NYSEG:** The Licensee shall indemnify, hold harmless, and defend NYSEG from and against any and all liabilities, losses, damages, costs, suits, judgments, claims, demands, penalties, and expenses of every name and description to which NYSEG may be subjected arising out of damage to any property, including loss of rights-of-way, property owners' consents and/or the cost of defending such rights, or injury to or death of any person or persons, directly or indirectly caused by, in any manner connected with, or attributed to, the actions or omissions of the Licensee, or any of its employees, servants, agents, contractors in the course of using, operating, handling, placing, connecting, working on, maintaining, repairing, replacing and/or removing its Facilities covered by this Agreement, whether or not such damage or injury or death be attributed to, or claimed to be attributed to, the negligence of the NYSEG, its officers, employees, servants, agents or contractors, or otherwise, except for the damage, injury or death caused wholly by the gross negligence of NYSEG.

(b) **Damage to Licensee:** If NYSEG, while exercising due care, in the course of using, operating, handling, placing, connecting, working on, maintaining, repairing, replacing and/or removing its facilities covered by this Agreement, in any way damages the Facilities of the Licensee, NYSEG shall not be liable to the Licensee for any claim for

indirect, consequential, exemplary, special, incidental, or punitive damages, including without limitation, loss of use or lost business, revenue, profits or goodwill, arising in connection with this Agreement, under any theory of tort, contract, warranty, strict liability or negligence. The Licensee shall indemnify, save harmless and defend NYSEG from and against any and all claims by a subscriber or customer of the Licensee.

The total liability of NYSEG to Licensee shall be limited to the lesser of (a) direct damages proven by Licensee or (b) the aggregate amounts paid by Licensee to NYSEG under this Agreement for the six (6) month period prior to the accrual of such cause of action. No cause of action under any theory which accrued more than one (1) year prior to the institution of a legal proceeding alleging such cause of action may be asserted by Licensee.

(c) Insurance Levels: In furtherance of this promise of indemnification, the Licensee shall carry or cause to be carried, at all times during the term of the Agreement, insurance in type and amount satisfactory to NYSEG, applying to all work and activity undertaken by the Licensee, its agents, employees, servants, contractors to protect NYSEG from and against any and all liabilities, losses, damages, costs, suits, judgments, claims, demands, and expenses of every name and description to which NYSEG may be subjected. Such insurance shall include, but is not limited to the following:

Statutory Workers' Compensation Insurance including Employers' Liability.

Comprehensive General Liability Insurance with combined bodily injury and property damage limits of at least \$1,000,000 each occurrence or in the aggregate including, but not limited to, coverage for Premises-Operations, Explosion, Collapse and

Underground Hazards, Contractual, Broad Form Property Damage, Independent Contractors, Personal Injury and Products/Completed Operations coverage.

Automobile Liability Insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage limits of at least \$1,000,000 per occurrence.

Except with respect to Workers' Compensation and Employers' Liability, NYSEG and its officers, directors, and employees shall be included as additional insureds in Licensee's insurance policies and such insurance shall be considered as primary insurance. Any separate insurance maintained in force by NYSEG shall not contribute with insurance extended by Licensee's insurer(s) under this requirement.

(d) Insurance Notifications: All insurance required shall remain in force during the term of the Agreement and the company or companies issuing such insurance shall be rated "A" under an A.M. Best rating and be approved by NYSEG prior to the attachment of Facilities. Prior to the attachment of its Facilities, the Licensee shall submit to NYSEG, Risk Management, 89 East Ave, Rochester, New York 14649, certificates by each company insuring the Licensee indicating that the insurance set forth in this Article is in full force and effect and that NYSEG will receive at least thirty (30) days prior written notice of the cancellation of such insurance or of any modification of such insurance that may affect NYSEG's interests.

(e) Damage to Third Parties: In the event that any Joint Owner may be required to consent to this Agreement for any reason, the insurance and indemnification previously contained herein shall cover and run to said Joint Owner with the same force

and effect as if said Joint Owner was a signatory to this Agreement and shall be specifically named in said certificates insuring the Licensee.

(f) **Damage Report:** Licensee shall exercise special precautions to avoid damage to Facilities of NYSEG, Joint Owners, and other third parties, on said Poles; and hereby assumes all responsibility for any and all loss for such damage. Licensee shall make an immediate report to NYSEG of said occurrence of any damage and hereby agrees to reimburse NYSEG, Joint Users, and/or other third parties for the expense incurred in making repairs.

**Force Majeure:** Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement, other than failure to pay monies due or owed, to the extent that such failure or delay is caused by acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action or other environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, acts or omissions of transportation or common carriers, or causes beyond the control of the Party. If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition, other than the obligation to make Rental payments hereunder, shall be abated and shall resume without liability thereafter.

## **ARTICLE X      TERM AND TERMINATION OF AGREEMENT**

(a) Term: This Agreement shall continue in effect for a term of five years from the date hereof and thereafter until terminated as provided herein. This Agreement, if not previously terminated in accordance with Article X (b), may be terminated at the end of said time or at any time thereafter by either party giving to the other party at least six (6) months prior written notice.

(b) Termination: NYSEG may terminate the Agreement immediately upon notice to Licensee if NYSEG is unable to obtain any governmental license, waiver, consent, registration or approval necessary to perform its obligations. If Licensee fails to comply with any of the provisions of this Agreement or defaults in any of its obligations under this Agreement, NYSEG may, at its option, terminate this Agreement in its entirety, or require the Licensee to remove its attachments from the Pole or Poles involved in the default or non-compliance. Termination of this Agreement does not release or affect in any way any liability or obligation of the Licensee pursuant to the terms of this Agreement and such liability survives the termination of this Agreement. If Licensee fails to remove its Facilities within six (6) months after notice of termination of this Agreement or cancellation of any licenses, NYSEG shall remove Licensee's Facilities, at Licensee's expense and without incurring any liability for damage to or destruction of said Facilities. Prior to terminating or revoking any license under this Agreement, or the Agreement itself, for whatever cause or purpose, a petition may be brought by either party to the New York Public Service Commission (the "Commission") requesting the Commission to decide the dispute. A Commission determination shall be binding on all parties to this Agreement.

Removals: Licensee may at any time remove its attachments from any NYSEG's Poles and thus terminate this Agreement, but shall immediately give written notice to NYSEG by means of the Streetlight Request Form substantially in the form of "Exhibit A" attached hereto. No credit or refund of any Rental charges shall be allowed the Licensee on account of such removal.

#### **ARTICLE XI GOVERNING LAW**

This Agreement shall be construed, interpreted and governed in accordance with the laws, ordinances and regulations of the State of New York, without regard to its conflicts of laws provisions.

#### **ARTICLE XII AMENDMENTS**

This Agreement may only be modified, amended or supplemented by an instrument in writing signed by both parties.

### **ARTICLE XIII SEVERABILITY**

If any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby. If a provision that is rejected or held to be illegal, invalid or unenforceable is material to carry out the intent of this Agreement, the parties shall negotiate in good faith an amendment to this Agreement to replace the unenforceable language with enforceable language.

### **ARTICLE XIV COUNTERPARTS**

This agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by the duly authorized officers as of the day and year first above written.

NEW YORK ELECTRIC AND GAS CORPORATION  
(Business Signature)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ron Foster  
Manager, Marketing and Sales

NEW YORK ELECTRIC AND GAS CORPORATION  
(Control Signature)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Tamara Feck  
Manager - Programs/Projects, OpCo Control, Regulatory Support

COMPANY NAME

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name  
Title

## EXHIBIT A

Streetlight Request Form

Service Class 4 - Energy Only

NYSEG

| Customer Information   |  |           |   |                          |  |                         |                     |
|--|--|-----------|---|--------------------------|--|-------------------------|---------------------|
| Municipality Name  |  |           |   | NYSEG Account #          |  |                         |                     |
| Authorized Representative  |  |           |   | Contact Telephone Number |  |                         |                     |
| NYSEG Connection Point   |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Connect<br><input type="checkbox"/> Disconnect<br><input type="checkbox"/> Existing<br><input type="checkbox"/> Reconnect | Overhead - Pole #                            |           | Underground - Manhole/Handhole # [if known] |                          | Secondary power available at location? |                         | Yes    No           |
|  | Description of Location for Connection Point |           |   |                          |  |                         |                     |
|  |  |           |   |                          |  |                         |                     |
|  |  |           |   |                          |  |                         |                     |
| Fixtures - ( fill out one line for each fixture)   |  |           |   |                          |  |                         | For NYSEG Use Only  |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| <input type="checkbox"/> Install   | Street Name                                  | Line #    | Pole #                                      | Wattage (incl. ballast)  | Lamp Type                              | Attached to NYSEG pole? | Attachment approved |
| <input type="checkbox"/> Remove  |  |           |   |                          |  |                         |                     |
| Project Notes  |  |           |   |                          |  |                         |                     |
|  |  |           |   |                          |  |                         |                     |
| Authorized Representative  |  | Signature |   | Title                    |  | Date                    |                     |
| Additional instructions and information is provided on the back of this form.  |  |           |   |                          |  |                         |                     |
| For NYSEG use only<br>Installation:  |  |           |   | Received:                |  | SN:                     | CCS Updated:        |

**EXHIBIT B**

**1.0 General Notes for Energy Only Street Lighting**

1. As per tariff, the customer will be charged for connection and disconnection.
2. The customer will install ownership identification on all Energy Only poles. The identification will be decided upon by the municipality and agreed to by the Company.
  - a. The customer will determine a pole tagging convention that is convenient for them and submit it to the Company.
  - b. The Company will agree or make changes and work with the municipality to determine a final identification.
  - c. Once the identification is agreed upon, the location will be as follows:
    - i. NYSEG/RGE owned pole – identification will be placed below the NYSEG/RGE pole identification at a minimum of 5’ above grade.
    - ii. The identification tag should not be more than 3 inches tall by 6 inches wide.
3. The customer shall identify the lamp per ANSI standard C136.15-2009.
4. The NYSEG/RGE approved in-line disconnects are listed in the table below.

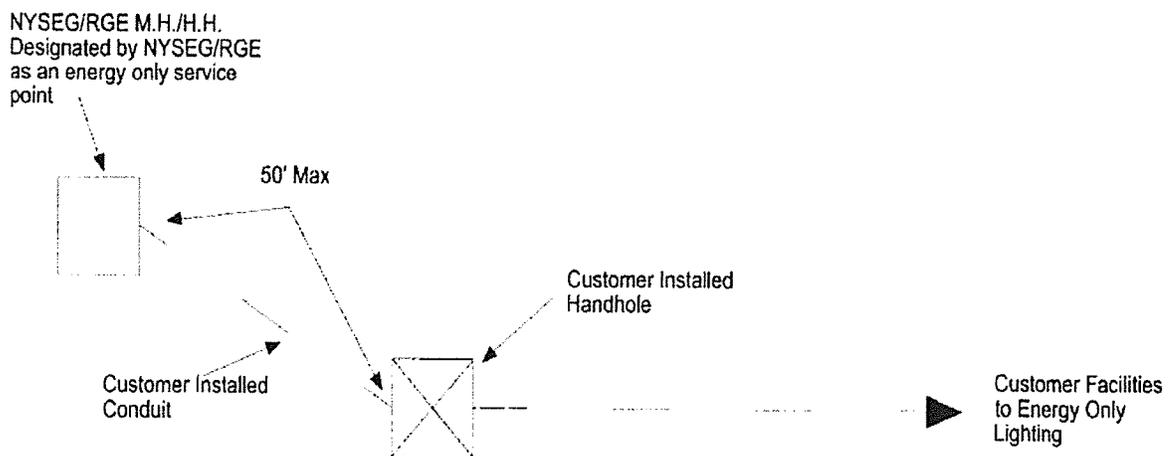
| <b>DESCRIPTION</b>                       | <b>WIRE SIZE/TYPE</b>                      | <b>MANUFACTURER</b> | <b>CATALOG NO.</b> |
|--|--|---------------------|--------------------|
| <b>IN-LINE PHASE<br/>FUSED BREAKAWAY</b> | #14 - 10 STRANDED                          | HOMAC               | SLK-2A             |
|  | #12 -8 SOLID (ALUM)                        | BUCHANAN            | 65-UAUA            |
|  | #8 - 6 STRANDED, #6 -<br>#4 SOLID (ALUM)   | HOMAC               | SLK-3A             |
|  |  | BUCHANAN            | 65-UAUA            |
|  | #12 - #4 STRANDED<br>OR SOLID (ALUM)       | HOMAC               | SLK-M              |
|  |  | BUCHANAN            | 65-LALA            |
|  | #14- 6 STRANDED (CU)<br>#14 - 4 SOLID (CU) | HOMAC               | SLT-6              |
|  |  | BUCHANAN            | 65-LCLC            |

5. Conduit shall be rigid galvanized steel or Schedule 80 PVC.
6. Customer to have all work performed by qualified workers following OSHA regulations, the National Electric Safety Code, Company specifications and local electrical codes.

## 2.0 Underground Supplied Fixture From an Underground Service Point

1. The customer will install a pull box within 50' of NYSEG/RGE's manhole, handhole or padmount designated as the point of service.
2. The customer will extend a conduit from the pullbox to NYSEG's/RGE's MH/HH/PM. NYSEG/RGE will break into and seal conduit entrance into NYSEG/RGE MH/HH/PM.
3. Customer will supply a 200 lb. nylon pull cord for pulling supply conductors into NYSEG/RGE MH/HH/PM. NYSEG/RGE will assist with the entry in MH/HH/P and pull the rope and leave coiled for future cable pull. Refer to note 5 for cable pulling in NYSEG/RGE MH/HH/PM.
4. Customer will install a current limiting in-line disconnect device in customer H.H. and will supply sufficient length of supply conductors coiled in H.H. to reach center of NYSEG/RGE MH/HH/P. Refer to note 5 for cable pulling in NYSEG/RGE MH/HH/PM.
5. NYSEG/RGE will pull supply conductors into NYSEG/RGE MH/HH/PM and connect. A solid unbreakable connection will be made between NYSEG/RGE and customer conductors.
6. A tariff option allows a single fixture to be connected directly without a customer H.H. if the pole is within 50' from the NYSEG/RGE MH/HH/PM and there is sufficient room in base for a current limiting in-line disconnect device and coiled supply conductors.

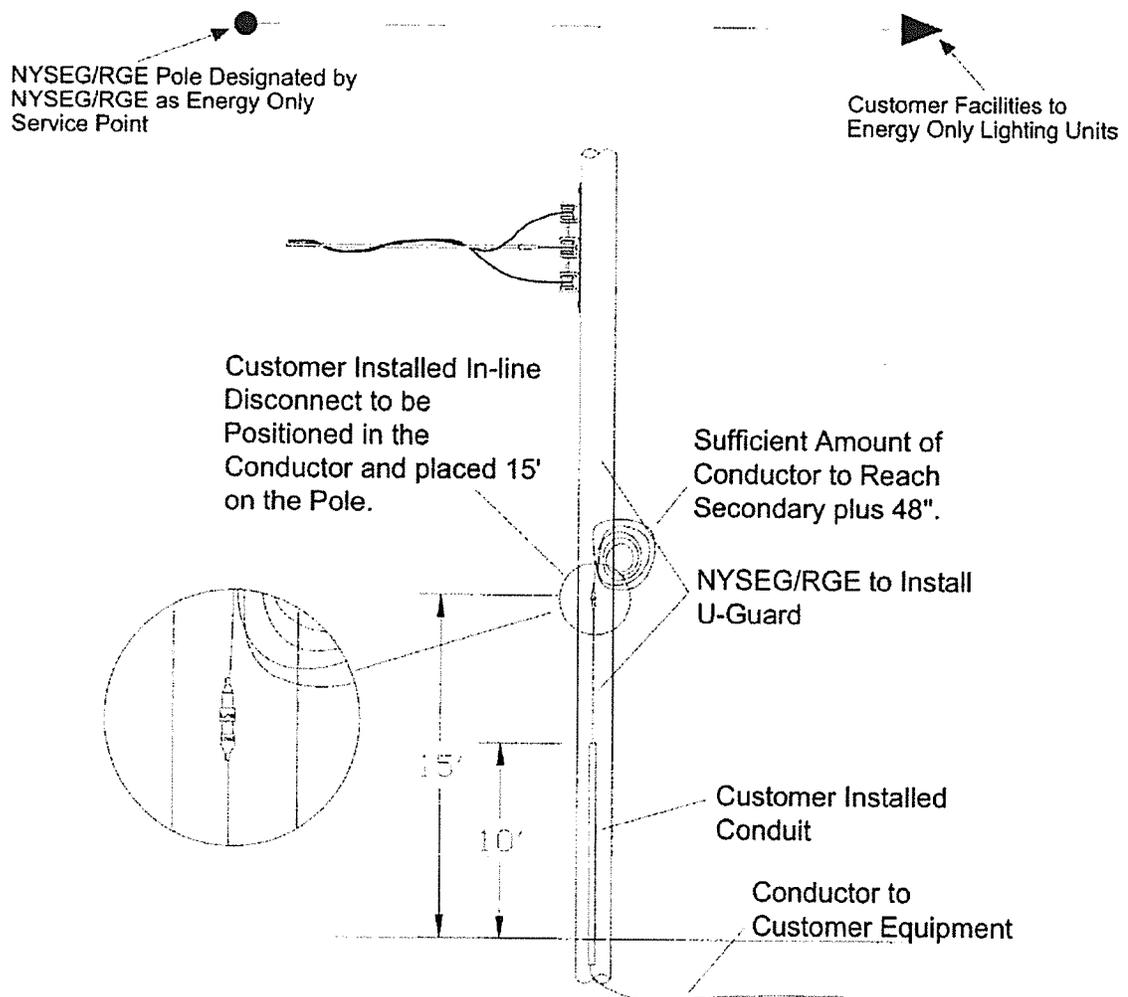
Note: If the customer elects to install an approved direct buried cable, the cable should be left coiled and protected at the outside wall of NYSEG's/RGE's MH/HH/PM.



**Figure 1: Underground Supplied Fixture from Underground Supply Point**

### 3.0 Underground Supplied Fixture from an Overhead Service Point

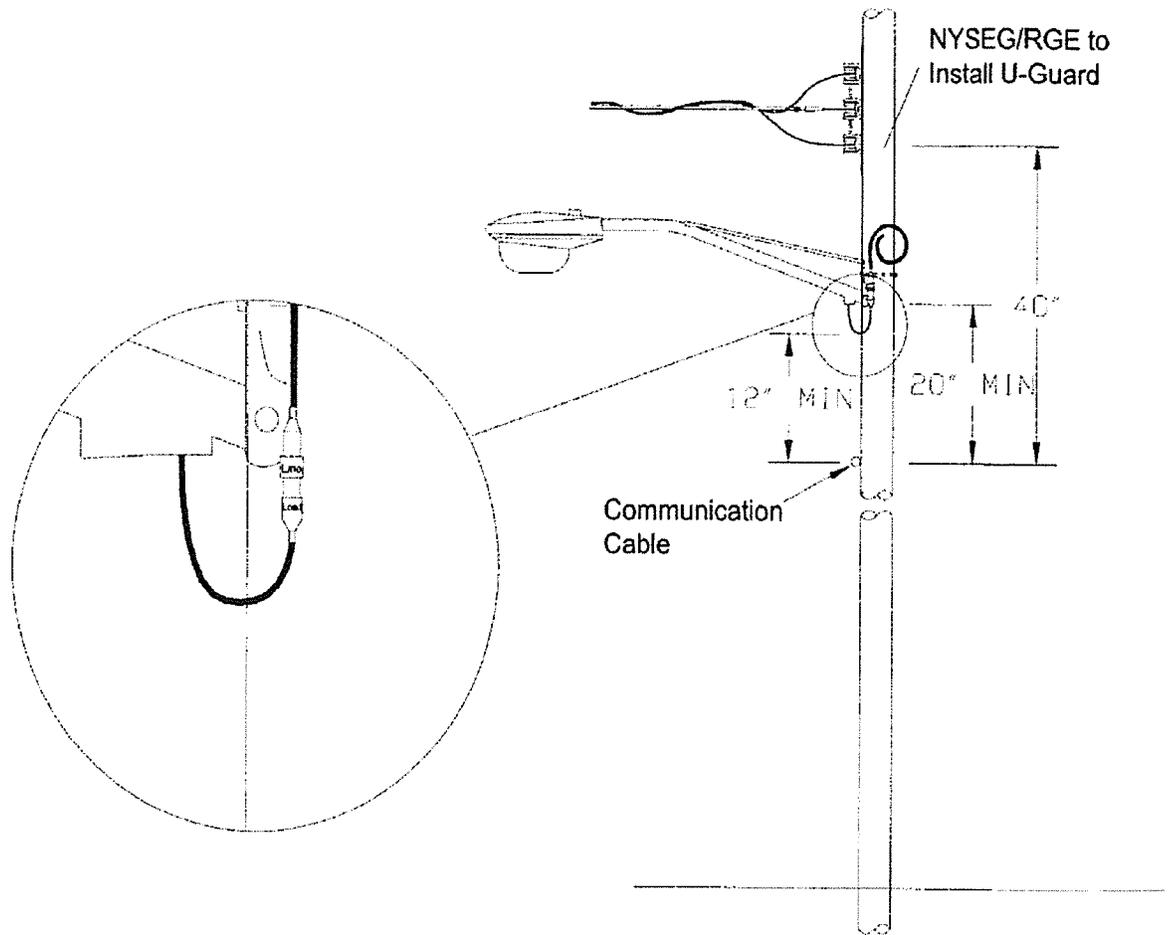
1. Customer will install 10' conduit riser on pole. Metal risers will be installed with appropriate grounds.
2. Location of riser to be directed by NYSEG/RGE.
  - a. Pole identification tags should not be covered.
  - b. Care should be taken to allow room for linemen to climb pole.
3. Customer will install a current limiting in-line disconnect device 5' above the riser with sufficient cable to reach NYSEG/RGE secondary plus 48".
4. NYSEG/RGE will make connections to the secondary facility.



**Figure 2: Underground Supplied Fixture From Overhead Service Point**

#### 4.0 Overhead Supplied Fixture from an Overhead Service Point

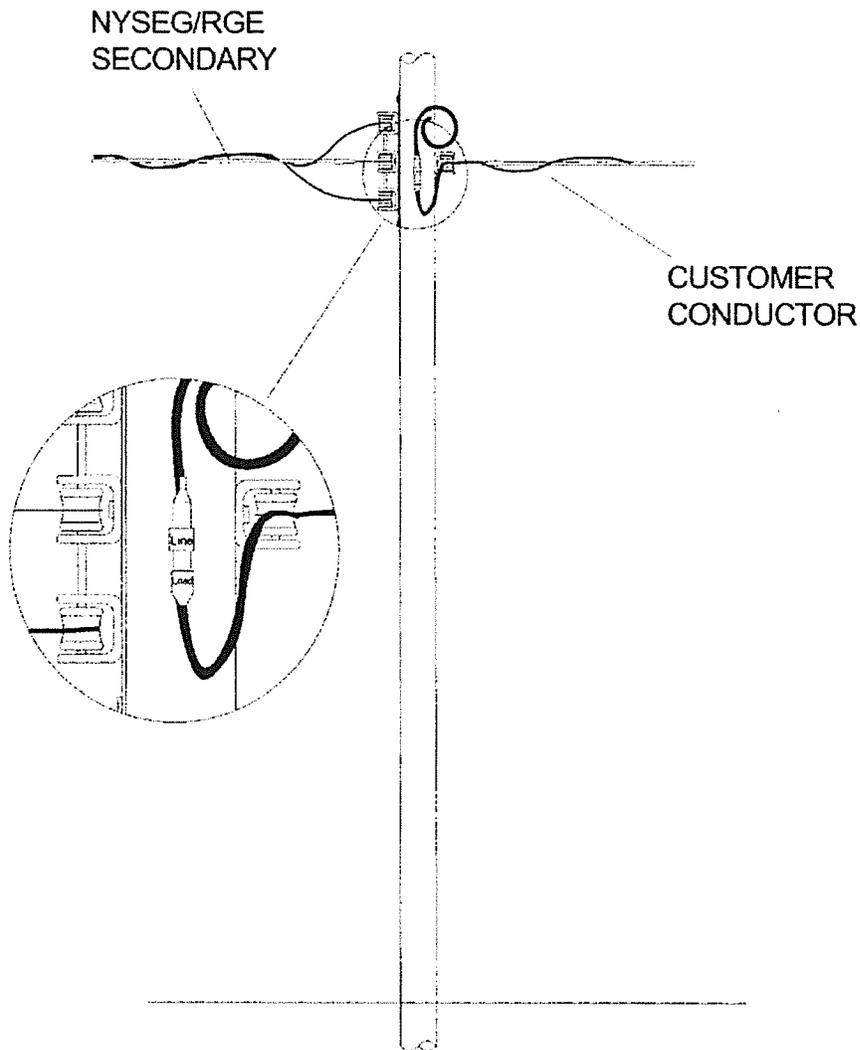
1. The customer will install conductors and a bonding conductor (#6 copper minimum) of sufficient length plus 48" to reach NYSEG's/RGE's secondary facilities on the pole.
2. The customer will mount the current limiting in-line disconnect device at the bracket pole plate and connect the bonding wire to the bracket.
3. NYSEG/RGE will make connections to the secondary facility.



**Figure 3: Overhead Supply Point to Overhead Fixture**

## 5.0 Customer Installed Overhead Conductor to an Overhead Service Point

1. Customer will bring overhead conductor to NYSEG/RGE service point pole and suspend the conductor from a customer installed clevis or the Company clevis or service rack if permission is given. The conductor will be of sufficient length to reach NYSEG's/ RGE's secondary facilities on the pole plus 48".
2. Customer will include the current limiting in-line disconnect with the conductor.
3. NYSEG/RGE will make connections to the secondary facility.



**Figure 4: Customer Installed Overhead Conductor to an Overhead Service Point**

## West Seneca use of General Fund Reserve

WHEREAS, on May 7<sup>th</sup>, 2012, the Town established and funded a \$700,000 Capital Reserve Fund within its General Fund to finance the cost of acquisition and/or construction of permanent improvements and /or equipment; and

WHEREAS, currently the Town has \$144,587 remaining within the General Fund's Capital Reserve Fund; and

WHEREAS, on September 28, 2015, the Town resolved to set a bid date of October 21, 2015 at 2:00 P.M. for receipt of bids on the Courtroom Handicap Accessibility Project; and

WHEREAS, October 26, 2015, the Town resolved to award the bid for the Courtroom Handicap Accessibility Project to Northern Dream Construction at their low bid of \$118,000; and

WHEREAS, pursuant to Town Law §55 and Local Finance Law §11.00, the period of probable usefulness of the improvement is greater than five (5) years.

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board approves the new capital project number 005.1110.0200.0534 for the Courtroom Handicap Accessibility Project,

BE IT FURTHER RESOLVED, that pursuant to General Municipal Law Section-6c Town Board authorizes the transfer of \$125,000 of the General Fund's Capital Reserve Fund to capital project number 005.1110.0200.0534 for appropriations on the Courtroom Handicap Accessibility Project, subject to permissive referendum.

West Seneca Youth & Recreation

# Summer Day Camp 2016

COME JOIN OUR WONDERFUL STAFF FOR ACTIVITIES INCLUDING WEEKLY FIELD TRIPS, ARTS & CRAFTS, SPORTS, GAMES, SWIMMING AND A SUMMER OF FUN!

|                                    | Monday  | Tuesday                    | Wednesday          | Thursday                  | Friday                 |
|------------------------------------|---|----------------------------|--------------------|---------------------------|------------------------|
| <b>Week #1</b><br>June 27 – July 1 | Character Counts                                | Griffis Sculpture Park     | Beach              | Kelkenburg Farm           | Youth Theatre Workshop |
| <b>Week #2</b><br>July 5 - 8       | <i>CLOSED</i><br>Happy 4 <sup>th</sup> of July! | West Seneca History Museum | Beach              | Buffalo Museum of Science | Gaelic Games Clinic    |
| <b>Week #3</b><br>July 11 - 15     | Character Counts                                | Orchard Park Splash Pad    | Vigilant Fire Hall | Old Fort Niagara          | Talent Show            |
| <b>Week #4</b><br>July 18 - 22     | Dress Like A Super Hero Day                     | Eternal Flame              | Bison's Games      | Pajama Day                | Roller Rink Day        |
| July 25 -29                        | Character Counts                                | Aquarium                   | Beach              | Allegany State Park       | Tie-Dye Day            |
| <b>Week #6</b><br>August 1 - 5     | Roller Rink Day                                 | Botanical Gardens          | Delaware Park      | Broadway Driving Range    | Last Day of Camp       |

**FOR:** Boys & Girls 6-14 years old (*Must be 6 as of 6/27/16*)

**WHERE:** Held at Town Ice Rink & Veteran's Park Grounds (1250 Union Road, West Seneca NY 14224)

**WHEN:** 6 One week sessions – 7:30 AM – 5:30 PM (6/27/16 – 8/5/16)  
 Day Camp Activities are from 9:00 AM – 4:00 PM  
 Pre Camp Supervision is from 7:30-9:00 AM  
 Post Camp Supervision is from 4:00-5:30 PM  
*Pre & Post Camp Supervision is FREE OF CHARGE!!*

**REGISTRATION:** Begins For Town Residents February 1, 2016  
 Begins for Non-Residents March 1, 2016  
 Registrations will be accepted at:  
 900 Mill Road #210 West Seneca, NY 14224  
 Monday thru Friday 9:00 – 5:00 PM (Closed daily between 1:00 – 2:00 PM)

| FEES (per week)                           | Weeks 1,3,4,5,6 | Week 2 |
|---|-----------------|--------|
| <b>Resident</b>                           | \$140           | \$125  |
| <b>Resident Each Additional Child</b>     | \$125           | \$115  |
| <b>Non-Resident</b>                       | \$155           | \$140  |
| <b>Non-Resident Each Additional Child</b> | \$140           | \$130  |

*Space is Limited, \$50 non-refundable down payment is required for each slot, for each week for each child you are registering for. Remaining payment is due in full no later than June 20, 2016 at 4:00 PM. Payments made after this date will be subject to a \$5.00 a day late fee. In the event slots are open after the June 20, 2016(late fee date) – New registrations will not be assessed the late fee, However payment in full will be due day of registration. Transactions fees will be applied to each credit card payment. Immunization records are due at time of registration. Registration includes one camper t-shirt. Size quantities are limited and are on a first come first serve basis. Additional Shirts can be purchased after June 20, 2016 for \$7.*