



JOHN FENZ
TOWN ATTORNEY
jfenz@twsny.org

TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: December 10, 2015

Re: Agreement with NYSEG
Purchase of Street Lighting Facilities

Kindly authorize the Supervisor to execute the necessary documents to enter into the above-referenced Agreement to purchase NYSEG's street lighting facilities in the Town of West Seneca, and the ancillary Pole Attachment Agreement.

Pursuant to the Agreement the NYSEG will receive \$804,866.00 in exchange for transferring title of the facilities to the Town.

Pursuant to the provisions of the Energy Performance Contract, dated November 15, 2014, the purchase price shall be paid on behalf of the Town by John W. Danforth Company.

**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 MONROE)

On the ____ day of _____, 2014, 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 CLINTON)

On the ____ day of _____, 2014, 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