

ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW

THIS INDENTURE made this 20th day of MARCH, 2015, between Owner(s) New York State Electric & Gas Corporation, having an office at 18 Link Drive, Binghamton, County of Broome, State of New York (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the addresses known as 37 Front Street, 39-41 Front Street, 45 Front Street (Rear), Behind 49 Front Street and 24 Birdsall Street in the City of Norwich, County of Chenango and State of New York, known and designated on the tax map of the County Clerk of Chenango as tax map parcel numbers: Section 136.57 Block 1 Lots 33, 39.2, 43, 44, and 47, being the same as that property conveyed to Grantor by (i) deed dated August 25, 1909 and recorded in the Chenango County Clerk's Office on November 20, 1909 in Liber 227 of Deeds, at page 166 (Lot 33), (ii) deed dated May 18, 2009 and recorded in the Chenango County Clerk's Office on May 28, 2009 as Instrument No. 2009-0814 (Lot 39.2), (iii) deed dated December 29, 2008 and recorded in the Chenango County Clerk's Office on December 29, 2008 as Instrument No. 2008-2636 (Lot 43), (iv) deed dated May 8, 2009 and recorded in the Chenango County Clerk's Office on May 8, 2009 as Instrument No. 2009-0713 (Lot 44), and (v) deed dated May 15, 1995 and recorded in the Chenango County Clerk's Office on April 13, 1995 in Liber 784 of Deeds, at page 57 (Lot 47). The property subject to this

Environmental Easement (the "Controlled Property") comprises approximately 2.578 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 6, 2012 prepared by Chapin Land Surveyors, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number DO-0002-9309, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement")

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Commercial use as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial use as described in 6 NYCRR Part 375-1.8(g)(2)(iv);

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Chenango County Department of Health to render it safe for use as drinking water or for industrial purposes, and the

user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in the manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for **Residential purposes as defined in 6 NYCRR 375-1-8(g)(2)(i) or Restricted Residential purposes as defined in 6 NYCRR 375-1-8(g)(2) (ii), or for agriculture or vegetable gardens**, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:
(i) are in-place;
(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement.

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance

Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: 709011
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

SIGNATURE PAGE FOLLOWS

SCHEDULE "A"**ENVIRONMENTAL EASEMENT**
PROPERTY DESCRIPTION

ALL THAT PARCEL OR TRACT OF LAND SITUATE IN THE CITY OF NORWICH, COUNTY OF CHENANGO, AND STATE OF NEW YORK BEING DESCRIBED AS FOLLOWS:

BEGINNING at an iron rod on the northerly highway boundary of Front Street, said iron rod located at the intersection of the northerly highway boundary of Front Street with the easterly boundary of BG Norwich Stop, LLC (Now or Formerly) as described in a Warranty Deed dated March 1, 2004 and recorded in the Chenango County Clerk's Office as Instr. #2004-0851; thence N 04° 59' 52" W 182.78 feet along the easterly boundary of BG Norwich Stop, LLC to an iron rod located on the northerly boundary of BG Norwich Stop, LLC; thence S 82° 53' 54" W 37.35 feet along the northerly boundary of BG Norwich Stop, LLC to a magnetic nail on the easterly boundary of BG Norwich Stop, LLC; thence northeasterly 217.40 feet along a curve to the right having a radius of 704.865 feet and along the easterly boundary of BG Norwich Stop, LLC to a magnetic nail located on the southerly boundary of BG Norwich Stop, LLC; thence N 83° 31' 48" E 179.62 feet along the southerly boundary of BG Norwich Stop, LLC to a magnetic nail located on the easterly boundary of BG Norwich Stop, LLC; thence N 05° 49' 13" W 6.50 feet along the easterly boundary of BG Norwich Stop, LLC to a magnetic nail located on the southerly boundary of BG Norwich Stop, LLC; thence N 83° 31' 48" E 128.80 feet along the southerly boundary of BG Norwich Stop, LLC to a point located on the westerly boundary of BG Norwich Stop, LLC; thence S 05° 02' 38" E 70.35 feet along the westerly boundary of BG Norwich Stop, LLC to an iron rod located on the southerly boundary of BG Norwich Stop, LLC; thence N 85° 05' 26" E 188.20 feet along the southerly boundary of BG Norwich Stop, LLC to an iron rod located on the westerly highway boundary of Birdsall Street; thence S 04° 54' 18" E 66.00 feet along the westerly highway boundary of Birdsall Street to an iron pipe located on the northerly boundary of H.G.H. Construction Corporation (Now or Formerly – Liber 556/Page 404); thence S 85° 07' 26" W 156.69 feet along the northerly boundary of H.G.H. Construction Corporation to an iron rod located on the westerly boundary of H.G.H. Construction Corporation; thence S 05° 02' 10" E 66.32 feet along the westerly boundary of H.G.H. Construction Corporation to an iron rod located on the northerly boundary of The City of Norwich (Now or Formerly – Instr. #2008-0819); thence S 85° 24' 15" W 66.00 feet along the northerly boundary of the City of Norwich to an iron rod located on the easterly boundary of Robert A. Broten and Helen M. Broten (Now or Formerly – Liber 606/Page 935); thence N 05° 02' 10" W 66.00 feet along the easterly boundary of Broten to an iron rod located on the northerly boundary of Broten; thence S 76° 57' 12" W 67.67 feet along the northerly boundary of Broten to a concrete monument located on the westerly boundary of Broten; thence S 05° 13' 59" E 126.90 feet along the westerly boundary of Broten to an iron rod located on the northerly boundary of Martin E. Morse and Donna J. Morse (Now or Formerly – Liber 787/Page 407); thence S 84° 38' 31" W 59.40 feet along the northerly boundary of Morse to an iron rod located on the easterly boundary of Lisa A. Meyer and Keven R. Meyer (Now or Formerly – Liber 813/Page 04); thence N 05° 56' 08" W 13.45 feet along the easterly boundary of Meyer to an

SCHEDULE "A"
ENVIRONMENTAL EASEMENT
PROPERTY DESCRIPTION. continued

iron rod located on the northerly boundary of Meyer; thence S 84° 57' 59" W 49.50 feet along the northerly boundary of Meyer to an iron rod located on the westerly boundary of Meyer; thence S 05° 06' 43" E 139.77 feet along the westerly boundary of Meyer to an iron rod located on the northerly highway boundary of Front Street; thence S 85° 17' 50" W 136.29 feet along the northerly highway boundary of Front Street to the point and place of beginning.

The above-described premises containing 2.578 ±.