

GAS FRANCHISE AGREEMENT OF
THE VILLAGE OF HAMILTON
MADISON COUNTY, STATE OF NEW YORK

WITNESSETH

THIS AGREEMENT is entered into as of this day of May, 2013 by the VILLAGE OF HAMILTON, a municipal corporation duly incorporated under the laws of the State of New York with an office at 3 Broad Street, Hamilton, New York 13346 (hereinafter, the "VILLAGE"), and the TOWN OF MADISON, a municipal corporation duly existing under the laws of the State of New York with an office at 7358 State Route 20, Madison, New York 13402 (hereinafter the "TOWN").

WHEREAS, the Village of Hamilton, acting by and through its Board of Trustees, has duly established a municipal natural gas public utility service pursuant to the authority granted under New York State General Municipal Law Article 14-A, Section 360, *et. seq.*, and

WHEREAS, the VILLAGE has petitioned the TOWN for permission, consent and a franchise to construct, reconstruct, relocate, operate, repair, maintain, replace, remove, inspect and patrol, underground or grade level gas systems including, but not limited to, gas mains, gas service pipes, conduits, vaults, manholes, housings, connectors, markers, anchors, fittings, braces, foundations, valves and vents, together with any and all necessary appurtenances and accessories (collectively, the "Gas Facilities") as VILLAGE may now and from time-to-time deem necessary and reasonable, in, under, along, across, through and beyond the highways, streets and roads in the TOWN (the "Town Land") for the purpose of providing gas service to VILLAGE's customers, or otherwise in connection with VILLAGE's gas distribution or transmission operations (the "Franchise"), and

WHEREAS, the VILLAGE and the TOWN desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date of approval of this franchise agreement by the New York State Public Service Commission. The term of this Franchise shall automatically renew thereafter for successive twenty (20) year period(s) unless otherwise terminated by the Village after the first initial twenty (20) year period, and

WHEREAS, due notice of said petition and request of the VILLAGE has been given by publication of the notice of public hearing in the official TOWN newspaper ten (10) days prior to holding said hearing, a public hearing has been duly held, the petition has been duly considered by the Town Board and the TOWN is willing to issue the Franchise as set forth herein.

WHEREAS, the Town Board finds that it is in the public interest of its residents to enter into a franchise agreement with the VILLAGE.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged under seal,

BE IT RESOLVED that the non-exclusive Franchise is granted to VILLAGE and its successors, to construct, reconstruct, relocate, operate, repair, maintain, replace, remove, inspect and patrol the Gas Facilities as VILLAGE may now and from time-to-time deem

necessary and reasonable, in, under, along, across, through and beyond the Town Land for the purpose of providing gas service to VILLAGE's customers or otherwise in connection with VILLAGE's gas distribution or transmission operations.

PROVIDED, HOWEVER, that VILLAGE may not assign any rights or benefits accrued under this Franchise without written consent of the TOWN. The TOWN will not unreasonably condition or withhold such consent.

PROVIDED, FURTHER, that the location of said Gas Facilities shall be subject to the approval of the Town Highway Superintendent (which approval shall not be unreasonably conditioned or withheld) and shall be so installed and maintained as not to unreasonably obstruct or hinder public travel along the Town Lands and shall be suitably constructed and maintained so as not to endanger the public. The VILLAGE shall obtain the necessary permits for any proposed work and shall provide written notice of any proposed work on the Town Land not less than thirty (30) days prior to the commencement of such work, excepting emergency situations or as otherwise provided by applicable Federal, State or Local laws, codes, rules regulations and orders of any governmental entity with jurisdiction and/or as otherwise approved by the Town Highway Superintendent, and in all such cases notice will be provided to the TOWN as early as practicable; and

PROVIDED FURTHER, that in case of any disturbance of the surface of Town Lands, upon completion of such excavation or grading work, VILLAGE shall backfill and restore any and all excavated areas to the same or better condition as existed prior to such excavation or grading and as provided for in the Town Highway Superintendent's approval for the applicable work. Upon written notice to the VILLAGE that the restoration as performed does not meet such standards, the VILLAGE shall commence such repair and restoration within thirty (30) days, weather permitting and diligently prosecute such repair and restoration to completion, to the satisfaction of the Town Highway Superintendent. If the VILLAGE fails to restore the land as provided herein, the TOWN shall have the right to complete the work and in such event, the VILLAGE shall be responsible for all costs associated therewith, which amount shall be due and owing upon written demand; and

PROVIDED FURTHER, that all components of the Gas Facilities shall be laid and constructed in strict conformance with all applicable Federal, State and Local laws, codes, rules, regulations and orders of any governmental entity with jurisdiction. The VILLAGE shall use best industry standards and practices when performing work on the Gas Facilities; and

PROVIDED FURTHER, that any portion of the Gas Facilities will be deemed abandoned in the event such portion is (i) not used for a period of twelve (12) months or longer, and (ii) such portion of the Gas Facilities is not necessary for the operation of the larger gas infrastructure for which is a part, and (iii) such non-use of such portion of the Gas Facilities is not due to discontinuation of service requested by a customer of VILLAGE and/or non-payment. In the event that any portion of the Gas Facilities are abandoned, the TOWN shall provide the VILLAGE ninety (90) days' notice ordering that the VILLAGE remove such abandoned portions of the Gas Facilities from the TOWN, at the expense of VILLAGE. In the event that VILLAGE does not remove such Gas Facilities within said 90 day period and/or the VILLAGE and the TOWN do not agree otherwise, then the TOWN may choose to either (1) remove the abandoned Gas Facilities at VILLAGE's expense, which amounts shall be due and owing upon written demand; or (2) the TOWN may accept an assignment and assumption of

ownership of the Gas Facilities by a written instrument, approved by the TOWN'S attorney, effecting such transfer from VILLAGE and upon such transfer the TOWN may thereafter advertise and seek another grantee to operate the Gas Facilities. Regardless of which option is chosen by the TOWN, it shall be the sole responsibility of VILLAGE to purge the unused gas or natural gas byproduct from the Gas Facilities; and

PROVIDED FURTHER, that during the term of this Franchise, the VILLAGE shall file with the Town Clerk, and shall keep in full force and effect at all times, general liability insurance naming the TOWN as an additional insured; and

PROVIDED FURTHER, in consideration of the permissions granted to VILLAGE by this Franchise, VILLAGE hereby agrees to defend, indemnify and hold harmless the TOWN, its officials, officers, agents, trustees and employees from and against any and all claims, suits, actions, or causes of action of any kind whatsoever (a "Claim") and from and against any and all loss, damage, personal injury, loss of life or damage to property (including pollution damage), penalties, judgments and expenses (including reasonable attorneys' or other professional fees incurred in the investigation or defense of a Claim) (a "Loss") to the extent arising out of, or to the extent caused by VILLAGE's construction, maintenance, repair or operation of the Gas Facilities or VILLAGE's failure to perform any act required by this Agreement or applicable law. Except as otherwise provided herein, nothing herein shall be construed to affect in any way the TOWN's rights under the doctrine of "sovereign immunity" or "municipal immunity" pursuant to New York or Federal law. The provisions of this section shall survive the expiration or early termination of this Franchise; and

PROVIDED FURTHER, that this Agreement shall be duly accepted by an instrument in writing executed and acknowledged by VILLAGE within (30) days after the same shall be duly approved and adopted by resolution of the Town Board, which shall be filed with the Town Clerk. The TOWN hereby acknowledges that this Agreement shall be subject to the approval of the New York State Public Service Commission (the "Commission") and that VILLAGE, the Franchise, and the Tariff under which VILLAGE operates, are subject to the continuing jurisdiction of the Commission, and shall be subject, in an ongoing fashion, to any rules, regulations, laws or orders of the Commission, the State of New York or any court of competent jurisdiction. The TOWN further acknowledges that the VILLAGE's acceptance of this Agreement shall not be construed as a waiver by VILLAGE of any of its existing or future rights under its Tariff and New York or federal law.

-Village seal -

VILLAGE OF HAMILTON

Dated: _____

By: _____
Margaret Miller, Mayor

-Town Seal -

TOWN OF MADISON

Dated: _____

By: _____
Ronald Bono, Supervisor