

CONFIDENTIALITY AGREEMENT

This Agreement is effective as of the ____ day of _____, 20__ between Rochester Gas and Electric, a New York corporation with an office for business at 180 South Clinton Avenue, Rochester, New York 14604 (“RG&E”) and _____, a _____ corporation with an office for business at _____ (“Developer”). RG&E and Developer shall be considered jointly as “the Parties” and each individually as a “Party.”

WHEREAS, RG&E desires to engage Seller in the MF60 Southeast System Non-Pipes Alternative Solicitation to provide reliability services (the “Solicitation”);

WHEREAS, the Parties desire to keep their discussions and the nature and scope thereof confidential;

WHEREAS, such discussions will of necessity involve the disclosure by one Party (“Disclosing Party”) to the other Party (“Receiving Party”) of confidential and proprietary information; and

WHEREAS, the Parties desire to reach an understanding with respect to the disclosure of such information and with respect to the confidentiality of the discussions in general;

THEREFORE, the Parties agree as follows:

1. For the purpose of this Agreement, the term “Confidential Information” means any and all information that the Disclosing Party considers to be proprietary, secret and/or confidential and that (a) relates to the Disclosing Party’s past, present and future business activities, research, development, products, software, services or technical knowledge, and (b) has been identified, either in writing or orally, as confidential or other similar term or would be understood to be confidential by a reasonable person under the circumstances.
2. Each Party agrees that the Confidential Information it receives from the Disclosing Party is proprietary, the property of the Disclosing Party, and shall be kept strictly confidential. The Confidential Information shall not be sold, traded, duplicated, published or otherwise disclosed by the Receiving Party to anyone in any manner whatsoever. Except as permitted under paragraph 5 hereof, the Receiving Party shall not use the Confidential Information for any purpose, without the consent of the Disclosing Party, other than in connection with this Solicitation and, unless agreed to in writing, shall not bind the Parties following RG&E’s selection of a project vendor. The Parties acknowledge that they and their Representatives may form and retain mental impressions based upon the Confidential Information disclosed to each Party, and agree that it is not the intent of the Parties that the non-use restrictions contained in this Agreement will prevent these Representatives from performing their other work assignments for their respective employers, provided that such other work that does not involve the use or disclosure of the Confidential Information. The term “person” as used in this Agreement

shall broadly be interpreted to include, without limitation, any individual, corporation, company, group, partnership or other entity.

3. Confidential Information does not include any information which:

- (a) was known to the Receiving Party prior to the date of its disclosure pursuant to this Agreement and to which there is no existing obligation of confidentiality; or
- (b) is or becomes generally available to the public other than through the act or omission of the Receiving Party or its Representatives; or
- (c) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided that such source is not bound by a confidentiality agreement with the Disclosing Party or its Representatives or otherwise prohibited from transmitting such Confidential Information to the Receiving Party or the Receiving Party's Representatives by a contractual, legal or fiduciary obligation; or
- (d) is independently developed by the Receiving Party or any of its Affiliated Companies without the use of or reliance upon the Confidential Information.

4. In the event that a Receiving Party or anyone to whom the Receiving Party transmits such Confidential Information pursuant to this Agreement is legally requested or required to disclose any Confidential Information of a Disclosing Party, the Receiving Party will provide the Disclosing Party with notice, prior to disclosing such information, so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, a Receiving Party is nonetheless advised by counsel that it is legally compelled to disclose such information, it may, without liability hereunder, furnish that portion of such Confidential Information that is legally required and will reasonably cooperate with actions by the Disclosing Party, including making any applications or requests, at the Disclosing Party's sole cost and expense, for confidential treatment in the event that the Disclosing Party is without legal standing to make such application or request.

5. The Receiving Party shall be entitled to disclose the Confidential Information of the Disclosing Party and provide copies of the same, without the Disclosing Party's prior written consent, to its Representatives who have a need to know for the purpose of the Solicitation or to engage in discussions or negotiations with the Disclosing Party involving the Solicitation, and who are informed by the Receiving Party of the confidential nature of such Confidential Information and agree to abide by the terms of this Confidentiality Agreement. The Receiving Party shall be responsible for any violations of the provisions of this Agreement caused by any of the Receiving Party's Representatives. In this Agreement, "Representatives" means a Party's parent companies, Affiliated Companies, its and their respective directors, officers, employees (permanent or contract), agents or representatives, including, without limitation, its and their respective attorneys, lenders, subcontractors, accountants, consultants and financial

advisors, and the Party’s Representatives. An “Affiliated Company” of any Party shall mean any person or entity controlling, controlled by, or under common control with a Party hereto through majority stock, or other ownership interest, direct or indirect.

6. Upon thirty (30) days prior written notice, the Receiving Party shall promptly return or destroy (at the option of the Disclosing Party), the Confidential Information including all copies or other reproductions thereof, which are in the Receiving Party’s possession or the possession of its Representatives, and destroy any notes, analyses, summaries, compilations, studies, reports or other documents that contain Confidential Information and were prepared by the Receiving Party or its Representatives. In the event that the Receiving Party or its Representatives have destroyed any Confidential Information or copies, such Receiving Party shall confirm the destruction of such Confidential Information or copies in a letter, signed by an officer of the Receiving Party, accompanying the return of the documents and copies which were not destroyed, or in a separate letter if all Confidential Information was destroyed. Notwithstanding the foregoing:

- (a) RG&E will not be obligated to return or destroy any documents that reflect or refer to Confidential Information provided directly by the Disclosing Party and are retained by RG&E for the purpose of filings with regulatory agencies in connection with, related to, or involving the Solicitation or the cost thereof. With respect to any such retained Confidential Information, RG&E will be subject to the restrictions of this Agreement; and
- (b) the Parties may retain any Confidential Information they deem necessary to comply with the provisions of Section 4 of this Agreement.

7. Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by facsimile with date and sending Party identified to the following addresses:

Rochester Gas and Electric	Developer:
Attn: Katherine Huetter	Name:
180 South Clinton Avenue	Address:
Rochester, NY 14607	Town, State, Zip:
Telephone: (585) 481-5621	Telephone:
Email: katherine.huetter@avangrid.com	Email:

8. In the event of any breach or threatened breach by a Party of the terms hereof, the other Party shall be entitled to injunctive and other equitable relief, and the breaching Party shall not plead in defense thereto that there would be an adequate remedy at law. Such remedy shall be cumulative and in addition to all other remedies available to the non-breaching Party. The Parties acknowledge that the Confidential Information is

valuable and unique and that disclosure in breach of this Confidentiality Agreement may result in irreparable injury to the Disclosing Party.

9. Developer acknowledges that execution and delivery of this Agreement is required to allow Developer to participate in the Solicitation. Other than a claim arising from a breach of this Agreement, Developer acknowledges that by submitting a response to this Solicitation, Developer knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, including the NYPSC, the FERC, the Supreme Court or any other court in the State of New York (“State Court”) or United States District Court or any other United State’s Court (“Federal Court”) concerning or related in any way to the Solicitation and/or any appendices to the Solicitation (“Waived Claims”). The assertion of any Waived Claims by Developer at the NYPSC, FERC, State Court, Federal Court, or otherwise shall, to the extent that Developer’s Offer has not already been disqualified, provide RG&E the right, and may result in RG&E electing, to reject such Offer or terminate the Solicitation.

10. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other for any consequential, indirect, incidental, reliance, exemplary, punitive, special or indirect losses or damages.

11. No amendments, changes or modifications to this Agreement shall be valid unless the same are in writing and signed by a duly authorized representative of each of the Parties hereto.

12. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

13. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether written or oral, expressed or implied.

14. This Agreement shall be binding upon the successors and assigns of the Parties.

15. Nothing in this Agreement nor the furnishing of Confidential Information pursuant hereto shall be construed in any way as an offer or as obligating either Party to enter into any further agreement, negotiation or transaction with the other or to refrain from entering into an agreement, negotiation or transaction with any other person, including without limitation any person engaged in the same or similar line of business as the other Party hereto.

16. This Agreement shall be in effect commencing on the last date of execution by a Party hereto for a period of three (3) years unless superseded at an earlier date by the confidentiality provisions of a definitive agreement, and shall be construed and governed by the laws of the State of New York, without regard to choice of law or conflicts of law provisions that would allow or require the application of the law of another jurisdiction.

17. Although the Receiving Party understands that the Disclosing Party has endeavored to include in such Confidential Information those materials that are believed to be reliable and relevant for the purpose of the Receiving Party's evaluation, the Receiving Party acknowledges that neither the Disclosing Party nor its Representatives makes any representation or warranty as to the quality, accuracy, fitness, reliability or completeness of such Confidential Information. The Receiving Party agrees that neither the Disclosing Party nor its Representatives shall have any liability to the Receiving Party or to any of the Receiving Party's Representatives as a result of the use of such Confidential Information by the Receiving Party and the Receiving Party's Representatives, it being understood that only those particular representations and warranties that may be made to the Receiving Party by the Disclosing Party or its affiliates in a definitive transaction agreement, when, as and if it is executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, shall have any legal effect. Notwithstanding the foregoing, the Disclosing Party does represent and warrant to the Receiving Party, that the Disclosing Party has the unqualified right to disclose and to provide the Confidential Information to the Receiving Party.

18. Each Party understands and agrees that no failure or delay by the other Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.

IN WITNESS WHEREOF, this Agreement is effective as of the day and year first above written.

Rochester Gas and Electric

By: _____
Name: _____
Title: _____
Date: _____

[Developer]

By: _____
Name: _____
Title: _____
Date: _____