

RG&E ENERGY ESCO PROGRAM ESCROW AGREEMENT

This Escrow Agreement is made effective as of the _____ day of _____, _____ between Rochester Gas and Electric Corporation ("RG&E"), {NAME OF ENERGY ESCO} (the "Energy ESCO") and {NAME OF BANK} (the "Escrow Agent").

Statement of the Premises

Concurrently herewith the Energy ESCO and RG&E are entering into an ESCO Service Agreement and certain ancillary instruments and agreements and may hereafter renew the same or enter into new or additional or similar agreements pertaining to the delivery of electricity by the Energy ESCO to RG&E (the "Contracts").

Statement of Consideration

In consideration of the premises, to induce RG&E to enter into the Contracts, and in consideration of the mutual promises herein contained, the parties hereby agree as follows:

Agreement

Part 1. Definitions. In addition to the definitions set forth above, as used herein the following terms shall have the following meanings:

"Authorized Investments" means any of the following (including any funds comprised of the following, which may be funds maintained or managed by the Escrow Agent):

- (a) Investments in direct obligations of the United States of America and agencies thereof and obligations unconditionally guaranteed by the United States of America;
- (b) Investments in obligations of commercial banks or bank holding companies organized under the laws of the United States of America or any State thereof rated in the three highest grades by Fitch Investors Service, L.P. or, if unrated, banks ranked within the largest 100 by deposit size. Included are certificates of deposit, bankers acceptances, finance bills, commercial paper, notes and debentures.
- (c) Investments in obligations of corporations organized under the laws of the United States of America or any State thereof rated in the three highest grades by Standard & Poor's Corporation, Moody's Investors Service, Inc. or Fitch Investors Service, L.P.

- (d) Options or repurchase agreements for the purchase or sale of investments referred to in clauses (a) through (c) above.

“Escrow Account” means the Escrow Account established by the Escrow Agent pursuant to Section 2.2 hereof.

“Escrow Deposits” means the investment securities and monies transferred by the Energy ESCO to the Escrow Agent from time to time for deposit in the Escrow Account.

“Escrow Funds” means all investments and monies on deposit in the Escrow Account (including both Escrow Interest and Escrow Deposits).

“Escrow Interest” means all interest or other investment income earned on all moneys in the Escrow Account.

“Liabilities” means all debts, liabilities and obligations of the Energy ESCO to RG&E incurred pursuant to and under any of the Contracts.

Part 2. Establishment of Escrow Agency and Escrow Account.

2.1 RG&E and the Energy ESCO hereby appoint the Escrow Agent, and the Escrow Agent hereby accepts, the escrow agency established under this Escrow Agreement.

2.2 The Escrow Agent hereby establishes a separate account entitled the “{NAME OF ENERGY ESCO}/RG&E Energy ESCO Program – Escrow Account” to be maintained and held in escrow pursuant to and under this Escrow Agreement.

2.3 The Energy ESCO will on the effective date of this Escrow Agreement transfer to the Escrow Agent title to the investment securities or monies identified on Attachment A annexed hereto for the purpose of securing the payment of the Liabilities. The Energy ESCO may make additional transfers of investment securities or monies to the Escrow Agent from time to time until this Escrow Agreement shall be terminated.

Part 3. Investment of Escrow Funds.

3.1 The Escrow Agent shall co-mingle in the Escrow Account all Escrow Deposits received by the Escrow Agent. Subsequent to the clearing of all checks and similar items, moneys held in the Escrow Account shall be invested and reinvested by the Escrow Agent in Authorized Investments pursuant to written direction received by the Escrow Agent from anyone purporting to be an authorized representative of the Energy ESCO or pursuant to oral direction promptly confirmed in writing by such authorized representative. In the event of any discrepancy between the oral and written directions, the investment made by the Escrow Agency in accordance with its understanding of the oral direction shall be presumed to be correct and shall govern.

The Escrow Agent may at any time sell or otherwise reduce to cash a sufficient amount of such investments whenever the cash balance in the Escrow Account is insufficient for the purposes thereof and the Escrow Agent shall not be liable for any early termination penalties connected therewith. Any such investments shall be held by or under the control of the Escrow Agent and shall be deemed at all times a part of the Escrow Account, and the interest accruing thereon and any profit or dividends realized from such investment shall be credited to and held in and any loss shall be charged to the Escrow Account.

3.2 In the event that the Escrow Agent shall not have received a timely direction for investment of any moneys in the Escrow Account, the Escrow Agent shall be under no duty to invest such moneys, but the Escrow Agent may temporarily invest such moneys in any short term obligations, including deposits in itself.

3.3 The Escrow Agent may make any investment pursuant to this Part 3 through its own investment department. The Escrow Agent shall not be liable for any depreciation in the value of any investment made pursuant to this Part 3 or for any loss arising from any such investment.

3.4 Prior to the delivery of the Escrow Funds to the Energy ESCO pursuant to Section 4.2, the Escrow Funds and each and every part thereof shall not be used directly or indirectly as security for a loan to the Energy ESCO or any other person, firm or corporation, and shall not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Energy ESCO, the Escrow Agent or any person, firm or corporation claiming through the Energy ESCO or the Escrow Agent other than as specifically set forth in this Escrow Agreement. The Escrow Agent agrees to hold the Escrow Deposits and Escrow Interest, if any, in escrow for the beneficial interest of RG&E pursuant to the terms of this Escrow Agreement subject to delivery of the Escrow Funds to RG&E pursuant to Section 4.1 and until the return of all remaining Escrow Funds to the Energy ESCO pursuant to Section 4.2, all subject to the terms of this Escrow Agreement.

Part 4. Distribution of Escrow Funds. The Escrow Agent shall distribute the Escrow Funds in the amounts, at the times, and upon the conditions hereinafter set forth.

4.1 Interim Distributions. At any time and from time to time, upon written request of RG&E in substantially the form of Exhibit B hereto delivered to the Escrow Agent (each an "Original Disbursement Request"), the Escrow Agent shall deliver Escrow Funds to RG&E in the total amount set forth in such request subject to the following procedure: Within five (5) days of its receipt of the Original Disbursement Request, the Escrow Agent shall deliver a true copy of the Original Disbursement Request to the Energy ESCO. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Original Disbursement Request to the Energy ESCO the Escrow Agent shall receive no written notice (a "Rebuttal Notice") from the Energy ESCO which in any way controverts the Original Disbursement Request, the Escrow

Agent shall pay to RG&E from Escrow Funds the total amount set forth in the Original Disbursement Request. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Original Disbursement Request to the Energy ESCO, the Escrow Agent shall receive a Rebuttal Notice, the Escrow Agent shall, within five (5) days of its receipt of the Rebuttal Notice, deliver a true copy of the Rebuttal Notice to RG&E. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Rebuttal Notice to RG&E, the Escrow Agent shall receive no notice from RG&E which in any way controverts the Rebuttal Notice (the "Claim Notice"), the Escrow Agent shall consider the Original Disbursement Request as being void and of no further effect. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Rebuttal Notice to RG&E, the Escrow Agent shall receive a Claim Notice, a conflict shall be deemed to have arisen between the Rebuttal Notice and the Claim Notice (a "Conflict"), and the Escrow Agent shall within five (5) days of its receipt of the Claim Notice deliver notices of the Conflict to the Energy ESCO and RG&E, and the Escrow Agent shall be entitled to refrain from taking any further action in respect of the corresponding Original Disbursement Request until the Escrow Agent shall be directed otherwise in a writing subscribed by both the Energy ESCO and RG&E or by a final order of a court of competent jurisdiction and in respect of which order no further right of appeal shall exist.

4.2 Final Distribution. Upon the written request of the Energy ESCO delivered to the Escrow Agent stating that it has completed all performance on its part to be performed under the Contracts and that the Contracts have been terminated in full (the "Final Disbursement Request"), the Escrow Agent shall deliver all remaining Escrow Funds (including all Escrow Interest) to the Energy ESCO subject to the following procedure: Within five (5) days of its receipts of the Final Disbursement Request, the Escrow Agent shall deliver a true copy of the Final Disbursement Request to RG&E. If, prior to the expiration of (10) days from the delivery of a true copy of the Final Disbursement Request to RG&E, the Escrow Agent shall receive no written notice (the "Rebuttal Notice") from RG&E which in any way controverts the Final Disbursement Request, the Escrow Agent shall pay to the Energy ESCO all remaining Escrow Funds. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Final Disbursement Request to RG&E, the Escrow Agent shall receive a Rebuttal Notice, the Escrow Agent shall receive no notice from the Energy ESCO which in any way controverts the Rebuttal Notice (the "Claim Notice"), the Escrow Agent shall consider the Final Disbursement Request as being void and of no further effect. If, prior to the expiration of ten (10) days from the delivery of a true copy of the Rebuttal Notice to the Energy ESCO, the Escrow Agent shall receive a Claim Notice, a conflict shall be deemed to have arisen between the Rebuttal Notice and the Claim Notice (a "Conflict"), and the Escrow Agent shall within five (5) days of its receipt of the Claim Notice deliver notices of the conflict to the Energy ESCO and RG&E, and the Escrow Agent shall be entitled to refrain from taking any further action in respect of the Final Disbursement Request until the Escrow Agent shall be directed otherwise in a writing subscribed by both the Energy ESCO and the RG&E or by a final order of a court of competent jurisdiction and in respect of which order no further right of appeal shall exist.

Part 5. Duties and Liabilities of the Escrow Agent

5.1 Liability of Escrow Agent. The duties and obligations of the Escrow Agent hereunder shall be determined solely by the express provisions of this Escrow Agreement and the laws of the State of New York and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent. The Escrow Agent shall be under no obligation to refer to the Agreement or to any other documents pertaining to the Agreement or between or among any parties (including the New York State Department of Transportation) related in any way to the Agreement or related to this Escrow Agreement except as expressly provided herein.

5.2 Limitation of Liability. The Escrow Agent shall not be liable for any act it may do or omit to do hereunder while acting in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of its counsel shall be conclusive evidence of its good faith.

5.3 Reliance on Documents. The Escrow Agent shall be entitled to rely upon and shall be protected in acting in reliance upon any instructions, directions or information furnished to it in writing by the Energy ESCO or RG&E pursuant to any provision of this Escrow Agreement and shall be entitled to treat as genuine, and as the document it purports to be, any letter, paper or other document furnished to it by the Energy ESCO or RG&E and believed by the Escrow Agent to be genuine and to have been signed and presented by the proper party or parties.

5.4 Hold in Escrow Pending Judgment. If the Escrow Agent shall be uncertain as to its duties and rights under this Escrow Agreement, it may refrain from taking any action other than to keep all property held by it in escrow until it is directed otherwise by a written instruction subscribed by authorized representatives of both RG&E and the Energy ESCO or by a final judgment by a court of competent jurisdiction.

5.5 Resignation, Removal or Merger.

5.5.1 Resignation or Removal. The Escrow Agent shall have the right, at any time, to resign as Escrow Agent by giving written notice of its resignation to the Energy ESCO and RG&E at least 30 business days prior to the date specified for the resignation to take effect. The Energy ESCO and RG&E shall have the right, at any time, to remove the Escrow Agent from its duties hereunder by giving a joint written notice of such removal to the Escrow Agent at least 30 business days prior to the date specified for the removal to take effect, together with the name and address of the successor Escrow Agent to be appointed hereunder. If the Escrow Agent shall be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, the Energy ESCO and RG&E shall have the right, at any time, to remove the Escrow Agent from its duties hereunder by giving a joint written notice of such removal to the Escrow Agent at least two (2) business days prior to the date specified for the removal to take effect,

together with the name and address of the successor Escrow Agent to be appointed hereunder. In any such case, upon the effective date of the resignation or removal;

(i) All unearned fees will be returned to the Energy ESCO and all Escrow Funds then held by the Escrow Agent will be delivered by it to such person as may be designated in writing by authorized representatives of the Energy ESCO and RG&E, at which time the Escrow Agent's obligations under this Agreement will terminate.

(ii) The Escrow Agent's sole responsibility after the effective date of its resignation will be to keep all property then held by it and to deliver that property to a person designated in writing by the Energy ESCO and RG&E, or, if no such person is designated, in accordance with a final order or judgment of a court of competent jurisdiction.

(iii) In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by joint written notice by the Energy ESCO and RG&E within thirty (30) days after written notice of resignation of the Escrow Agent has been given to the Energy ESCO and RG&E, the Energy ESCO or RG&E or the resigning Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

5.5.2 Merger. Any corporation into which the Escrow Agent or any successor to it in the trusts created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation succeeding to all or substantially all of the corporate trust business of the Escrow Agent or resulting from any merger, conversions, consolidation or tax-free reorganization to which the Escrow Agent or any successor to it shall be a party shall, if satisfactory to RG&E and the Energy ESCO, be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

5.5.3 Transfer of Escrow Agency. Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon, each such successor Escrow Agent, without any further act, deed or conveyance, shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of RG&E or the Energy ESCO, execute, acknowledge and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, powers and trust of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the Energy ESCO be required by any successor Escrow Agent for more fully and certainly vesting in such successor

Escrow Agent the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the Energy ESCO, as the case may be.

5.6 Acceptance of Information. The Escrow Agent shall be under no duty to accept information from any person other than the Energy ESCO or RG&E and then only to the extent and in the manner provided in this Escrow Agreement.

5.7 Limitation of Responsibility. It is understood and agreed that the Escrow Agent shall have no liability or responsibility for the legality, validity or veracity of any action of the Energy ESCO or RG&E or any of their officers, directors, partners, agents, or employees, or any compliance or noncompliance by the Energy ESCO or RG&E with any law or regulation whatsoever.

Part 6. Fees and Disbursements of the Escrow Agent.

6.1 The Energy ESCO agrees to pay the Escrow Agent for its services hereunder such reasonable fees as may be agreed upon and agrees to promptly reimburse the Escrow Agent for all reasonable disbursements incurred in its performance of this Escrow Agreement, including counsel fees and disbursements.

6.2 The Escrow Agent shall have no claim or lien upon any of the Escrow Funds for payment of the obligations of the Energy ESCO under this Part 6 other than amounts payable to the Energy ESCO pursuant to Section 4.4.

7. Representation and Warranties of the Energy ESCO.

The Energy ESCO represents and warrants to RG&E and the Escrow Agent that:

7.1 Basic Representations.

7.1.1 Status. It is duly incorporated and validly existing and in good standing under the laws of the jurisdiction of its incorporation;

7.1.2 Powers. It has the power to execute and deliver the Contracts and this Escrow Agreement and to perform its obligations under all the Contracts and this Escrow Agreement and has taken all necessary action to authorize such execution, delivery and performance;

7.1.3 No Violation or Conflict. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

7.1.4 Consents. All governmental and other consents that are required to have been obtained by it with respect to all of the Contracts and this Escrow Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

7.1.5 Obligations Binding. Its obligations under all of the Contracts and this Escrow Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms except to the extent that enforceability may be limited by bankruptcy, insolvency or similar laws affecting creditors; rights generally or by general principles of equity.

7.2 Immediately prior to the transfer of each Escrow Deposit to the Escrow Agent hereunder it owned the property comprising such Escrow Deposit free and clear of any lien, encumbrance or security interest.

Part 8. Notices.

All notices, requests, demands and other communications or deliveries required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, given by telecopier or prepaid telegram or deposited for mailing by first class registered or certified mail, postage prepaid, to the addresses set forth below under the signature of each party to this Escrow Agreement. All notices by the Energy ESCO or RG&E to the Escrow Agent must be subscribed on behalf of the Energy ESCO or RG&E by any one of its authorized representatives set forth below under such signatures. Each party may by notice to each other party designate a new address to which notices must be sent or designate a new authorized representative.

Part 9. General Terms.

9.1. Pursuant to Section 5-1401 of the New York General Obligations Law, the whole of this Agreement and the rights and obligations of each party hereunder shall be governed, construed and interpreted in accordance with, the laws of the State of New York without regard to any conflicts-of-laws rules which would require the application of the laws of any other jurisdiction.

9.2 This Escrow Agreement sets forth the entire agreement and understanding of the parties with respect to this escrow transaction and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof and may not be contradicted by any prior or contemporaneous agreement.

9.3 This Escrow Agreement may be amended, modified, superseded or cancelled, and any of the terms or conditions hereof may be waived only by written instrument executed by each party hereto or, in the case of a waiver, by the party waiving compliance. Notwithstanding the above, the terms of Section 3.4, Part 4 and Part 7 of this Escrow Agreement may not be amended or modified without the written

consent of the parties to this Escrow Agreement. The failure of any party or any beneficiary at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by any party of any condition, or of the breach of any term contained in this Escrow Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of the breach of any other terms of this Escrow Agreement.

9.4 This Escrow Agreement shall inure to the benefit of each of the several parties, each of RG&E and each of their respective successors and assigns.

9.5 This Escrow Agreement shall terminate on the final distribution of the Escrow Funds, and the Escrow Agent shall be forever and irrevocably released and discharged from any and all further responsibility or liability with respect of the Escrow Account.

9.6 This Escrow Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same Escrow Agreement, fully effective upon the execution of at least one counterpart by each party, regardless of whether or not the execution by all parties shall appear on any single counterpart.

IN WITNESS WHEREOF, each of the parties has caused to be duly executed and delivered a counterpart of this Escrow Agreement by its duly authorized officer as of the day and year first above written.

{NAME OF BANK} _____

{NAME OF ENERGY ESCO} _____

By _____

By _____

Its _____

Its _____

Address for notices:

Address for notices:

Attention: _____

Fax # : _____

Authorized Representatives:

ROCHESTER GAS AND ELECTRIC
CORPORATION

By _____

Its _____

Address for notices:

89 East Avenue
Rochester, New York 14649
Attention: _____

Fax# _____

Authorized Representatives:

EXHIBIT A TO ESCROW AGREEMENT

List of investment securities or monies to be transferred by the Energy ESCO to the Escrow Agent and comprise the Initial Deposit on the Effective Date

EXHIBIT B TO ESCROW AGREEMENT

Form of Original Disbursement Request

Letterhead of RG&E

TO: {NAME OF BANK}

Re: RG&E Energy ESCO Program; Escrow Agreement

Greetings:

Please take notice that pursuant to Section 4.1 of the Escrow Agreement dated _____, 199_ among you, us and {NAME OF ENERGY ESCO}, we hereby request disbursement of Escrow Funds (as defined in the Escrow Agreement) to us in the amount of \$ _____. Please make such disbursement by electronic transfer to our account number _____ at _____, attention: _____,

Annexed hereto is a detailed description of the Liabilities (as defined in the Escrow Agreement) which are due and owing to us pursuant to and under the Contracts (as defined in the Escrow Agreement) and which have not been paid when due, whether by acceleration or otherwise, by {NAME OF ENERGY ESCO}.

ROCHESTER GAS AND ELECTRIC
CORPORATION

By _____

Its _____