

Cable Franchise Renewal Agreement

by and between

the Town of Orangetown

and

Verizon New York Inc.

Pursuant to §87(2)(c) and (d) of the New York Freedom of Information Law, we respectfully request that the LFA protect the confidentiality of this document and all communications related thereto by not disclosing the same to any third party. See NY CLS PUB O §§87(2)(c) and (d)

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THIS CABLE FRANCHISE RENEWAL AGREEMENT (the “Franchise” or “Agreement”) is entered into by and between the Town of Orangetown, a validly organized and existing political subdivision of the State of New York (the “Local Franchise Authority” or “LFA”) and Verizon New York Inc., a corporation duly organized under the applicable laws of the State of New York (the “Franchisee”).

WHEREAS, the LFA is a “franchising authority” in accordance with Title VI of the Communications Act, (*see* 47 U.S.C. §522(10)) and is authorized to grant one or more nonexclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended;

WHEREAS, the LFA granted to Franchisee effective as of April 20, 2007, a nonexclusive initial Franchise to install, maintain, extend, and operate a Cable System in the LFA for a term of ten (10) years (the “Initial Franchise”);

WHEREAS, the Franchisee has operated a Cable System in accordance with the Initial Franchise as of the effective date on its existing Telecommunications Facilities consisting of a Fiber to the Premises Telecommunications Network (“FTTP Network”) in the Franchise Area which also transmits Non-Cable Services pursuant to authority granted by Section 27 of the New York Transportation Corporations Law, as amended, and Title II of the Communications Act, which Non-Cable Services are not subject to the Cable Law or Title VI of the Communications Act;

WHEREAS, pursuant to and in accordance with applicable federal and state law, the LFA undertook a process to determine whether it should renew the Initial Franchise and the terms for such a renewal;

WHEREAS, the LFA has examined the past performance of Franchisee and has determined that Franchisee is and has been in material compliance with the Initial Franchise and applicable law;

WHEREAS, the LFA has identified the future cable-related needs and interests of the LFA and its community, has considered and approved the financial, technical and legal qualifications of Franchisee, and has determined that Franchisee’s Cable System is adequate and feasible in a full public proceeding affording due process to all parties;

WHEREAS, pursuant to and in accordance with applicable federal and state law, the Franchisee submitted to the LFA a proposal to renew the Initial Franchise to operate a Cable System in the Franchise Area;

WHEREAS, following good faith negotiations between the parties, the Local Franchise Authority and Franchisee have agreed on the terms for a renewal Franchise under which Franchisee will continue to operate its Cable System in the Franchise Area; and

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WHEREAS, the LFA has determined that in accordance with the provisions of the Cable Law, this Franchise complies with the NY PSC's franchise standards and the grant of a nonexclusive franchise to Franchisee is consistent with the public interest.

NOW, THEREFORE, in consideration of the LFA's grant of a franchise to Franchisee, Franchisee's promise to continue to provide Cable Service to residents of the Franchise Area pursuant to and consistent with the Cable Law (as hereinafter defined), pursuant to the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged,

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

Except as otherwise provided herein, the definitions and word usages set forth in the Cable Law are incorporated herein and shall apply in this Agreement. In addition, the following definitions shall apply:

1.1. *Access Channel*: A video Channel, which Franchisee shall make available to the LFA without charge for Public, Educational, or Governmental noncommercial use for the transmission of video programming as directed by the LFA.

1.2. *Affiliate*: Any Person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Franchisee.

1.3. *Basic Service*: Any service tier, which includes the retransmission of local television broadcast signals as well as the PEG Channels required by this Franchise.

1.4. *Cable Law*: Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, to the extent authorized under and consistent with federal law.

1.5. *Cable Service* or *Cable Services*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(6), as amended.

1.6. *Cable System* or *System*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(7), as amended.

1.7. *Channel*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. § 522(4), as amended.

1.8. *Communications Act*: The Communications Act of 1934, as amended.

1.9. *Control*: The ability to exercise *de facto* or *de jure* control over day-to-day policies and operations or the management of Franchisee's affairs.

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1.10. *Educational Access Channel*: An Access Channel available for noncommercial use solely by local public schools and public school districts in the Franchise Area and other not-for-profit educational institutions chartered or licensed by the New York State Department of Education or Board of Regents in the Franchise Area as specified by the LFA in Exhibit B to this Agreement.

1.11. *FCC*: The United States Federal Communications Commission, or successor governmental entity thereto.

1.12. *Force Majeure*: An event or events reasonably beyond the ability of Franchisee to anticipate and control. This includes, but is not limited to, severe or unusual weather conditions, strikes, labor disturbances and disputes, war or act of war (whether an actual declaration of war is made or not), insurrection, riots, act of public enemy, incidences of terrorism, epidemics, acts of vandalism, actions or inactions of any government instrumentality or public utility including condemnation, accidents for which the Franchisee is not primarily responsible, fire, flood, or other acts of God, or work delays caused by waiting for utility providers to service or monitor utility poles to which Franchisee's FTTP Network is attached, and unavailability of materials and/or qualified labor to perform the work necessary.

1.13. *Franchise Area*: The entire existing territorial limits of the LFA and such additional areas as may be annexed or acquired by dissolution of an incorporated village or otherwise during the term of this Franchise but not including any portion of an incorporated village located wholly or partially within the territorial limits of the LFA.

1.14. *Franchisee*: Verizon New York Inc. and its lawful and permitted successors, assigns and transferees.

1.15. *Government Access Channel*: An Access Channel available for the sole noncommercial use of the LFA.

1.16. *Gross Revenue*: All revenue, as determined in accordance with generally accepted accounting principles, which is derived by Franchisee from the operation of the Cable System to provide Cable Service in the Franchise Area, subject to the following inclusions and exclusions.

1.16.1. Gross Revenue includes, without limitation: all Subscriber and customer revenues earned or accrued net of bad debts as determined in accordance with generally accepted accounting principles, including revenue for: (i) Basic Service; (ii) all fees charged to any Subscribers for any and all Cable Service provided by Franchisee over the Cable System in the Franchise Area, including without limitation Cable Service related program guides, the installation, disconnection or reconnection of Cable Service; revenues from late or delinquent charge fees; Cable Service related or repair calls; the provision of converters, remote controls, additional outlets and/or other Cable Service related Subscriber premises equipment, whether by lease or fee; (iii) video on demand Cable Service, including pay-per-view Cable Service; (iv) revenues from the sale or lease of access channel(s) or channel capacity; and (v) compensation received by Franchisee that is derived from the operation of Franchisee's Cable System to provide Cable Service with respect to commissions that are paid to Franchisee as compensation for

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promotion or exhibition of any products or services on the Cable System, such as “home shopping” or a similar channel, subject to the exceptions below. Gross Revenue includes a pro rata portion of all revenue derived by Franchisee pursuant to compensation arrangements for advertising derived from the operation of Franchisee’s Cable System to provide Cable Service within the Franchise Area, subject to the exceptions below. The allocation of home shopping and advertising revenues shall be based on the number of Subscribers in the Franchise Area divided by the total number of subscribers in relation to the relevant local, regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in Gross Revenue.

1.16.2. Gross Revenue shall not include:

1.16.2.1. revenues received by any Affiliate or other Person in exchange for supplying goods or services used by Franchisee to provide Cable Service over the Cable System; bad debts written off by Franchisee in the normal course of its business (provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected); refunds, rebates or discounts made to Subscribers or other third parties; any revenue of Franchisee or any other Person which is received directly from the sale of merchandise through any Cable Service distributed over the Cable System, however, that portion of such revenue which represents or can be attributed to a Subscriber fee or a payment for the use of the Cable System for the sale of such merchandise shall be included in Gross Revenue; the sale of Cable Services on the Cable System for resale in which the purchaser is required to collect cable Franchise Fees from purchaser’s customer; the sale of Cable Services to customers, which are exempt, as required or allowed by the LFA including, without limitation, the provision of Cable Services to public institutions as required or permitted herein; any tax of general applicability imposed upon Franchisee or upon Subscribers by a city, state, federal or any other governmental entity and required to be collected by Franchisee and remitted to the taxing entity (including, but not limited to, sales/use tax, gross receipts tax, excise tax, utility users tax, public service tax, communication taxes and non-cable franchise fees); any foregone revenue which Franchisee chooses not to receive in exchange for its provision of free or reduced cost cable or other communications services to any Person, including without limitation, employees of Franchisee and public institutions or other institutions designated in the Franchise (provided, however, that such foregone revenue which Franchisee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenue); sales of capital assets or sales of surplus equipment; program launch fees, i.e., reimbursement by programmers to Franchisee of marketing costs incurred by Franchisee for the introduction of new programming; directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement and electronic publishing; any fees or charges collected from Subscribers or other third parties for any PEG Grant payments; and

1.16.2.2. except as otherwise provided in Subsection 1.16.1, any revenues classified, in whole or in part, as Non-Cable Services revenue under federal or state law including, without limitation, revenue received from Telecommunications Services; revenue received from Information Services, including, without limitation, Internet Access service, electronic mail service, electronic bulletin board service, or similar online computer services; charges made to the public for commercial or cable television that is used for two-way

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communication; and any other revenues attributed by Franchisee to Non-Cable Services in accordance with federal law, rules, regulations, standards or orders. Should revenue from any service provided by Franchisee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the LFA shall be entitled, after notification to Franchisee, to amend this Agreement in the manner prescribed under applicable state law or this Franchise to include revenue from Franchisee's provision of such service as Gross Revenue, and Franchisee shall include revenue from such service as Gross Revenue on a going forward basis commencing with the next available billing cycle following the date of issuance of an order from the NY PSC approving such amendment.

1.17. *Information Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(24), as amended.

1.18. *Internet Access*: Dial-up or broadband access service that enables Subscribers to access the Internet.

1.19. *Local Franchise Authority (LFA)*: The Town of Orangetown, New York, or the lawful successor, transferee, or assignee thereof.

1.20. *Non-Cable Services*: Any service that does not constitute the provision of Cable Service including, but not limited to, Information Services and Telecommunications Services.

1.21. *NY PSC*: The New York Public Service Commission.

1.22. *PEG*: Public, Educational, and Governmental.

1.23. *PEG Access Designee*: Any entity designated by the LFA for the purpose of owning and/or operating the equipment and facilities used in the production and/or broadcast of PEG Access Channel programming for the LFA, including but not limited to any access corporation.

1.24. *Person*: An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

1.25. *Public Access Channel*: An Access Channel available for noncommercial use solely by the residents in the Franchise Area on a first-come, first-served, nondiscriminatory basis.

1.26. *Public Rights-of-Way*: The surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including, public utility easements and public lands and waterways used as Public Rights-of-Way, as the same now or may thereafter exist, which are under the jurisdiction or control of the LFA. Public Rights-of-Way do not include the airwaves above a right-of-way with regard to cellular or other non-wire communications or broadcast services.

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1.27. *Subscriber*: A Person who lawfully receives Cable Service over the Cable System with Franchisee's express permission.

1.28. *Telecommunication Services*: Shall be defined herein as it is defined under Section 3 of the Communications Act, 47 U.S.C. §153(53), as amended.

1.29. *Title VI*: Title VI of the Communications Act, Cable Communications, as amended.

1.30. *Transfer of the Franchise*:

1.30.1. Any transaction in which:

1.30.1.1. a fifty percent ownership or greater interest in Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that Control of Franchisee is transferred; or

1.30.1.2. the rights held by Franchisee under the Franchise and the certificate of confirmation issued therefor by the NY PSC are transferred or assigned to another Person or group of Persons.

1.30.2. However, notwithstanding Sub-sections 1.30.1.1 and 1.30.1.2 above, a *Transfer of the Franchise* shall not include transfer of an ownership or other interest in Franchisee to the parent of Franchisee or to another Affiliate of Franchisee; transfer of an interest in the Franchise or the rights held by the Franchisee under the Franchise to the parent of Franchisee or to another Affiliate of Franchisee; any action which is the result of a merger of the parent of the Franchisee; or any action which is the result of a merger of another Affiliate of the Franchisee.

1.31. *Video Programming*: Shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. §522(20), as amended.

1.32. *Video Service Provider or VSP*: Any entity using any portion of the Public Rights-of-Way to provide Video Programming services to multiple subscribers within the territorial boundaries of the LFA, for purchase, barter, or free of charge, regardless of the transmission method, facilities or technologies used. A VSP shall include, but is not limited to, any entity that provides Cable Services, multi-channel multipoint distribution services, broadcast satellite services, satellite delivered services, wireless services, and internet-protocol based services within the territorial boundaries of the LFA.

2. **GRANT OF AUTHORITY; LIMITS AND RESERVATIONS**

2.1. *Grant of Authority*: Subject to the terms and conditions of this Agreement and the Cable Law, the LFA hereby grants the Franchisee the right to own, construct, operate and maintain a Cable System along the Public Rights-of-Way within the Franchise Area, in order to provide Cable Service. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by this Agreement.

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2.2. *The FTTP Network:* Upon delivery of Cable Service, by subjecting Franchisee's mixed-use facilities to the NY PSC's minimum franchise standards and the LFA's police power, the LFA has not been granted broad new authority over the construction, placement and operation of the Franchisee's mixed-use facilities.

2.3. *Effective Date and Term:* This Franchise shall become effective on the date that the NY PSC issues an order approving renewal for this Franchise (the "Effective Date"), following its approval by the LFA's governing authority authorized to grant franchises and its acceptance by the Franchisee. The term of this Franchise shall be five (5) years from the Effective Date unless the Franchise is earlier terminated by Franchisee pursuant to the terms of Section 2.4 or 2.5 or revoked as provided herein. The Franchisee shall memorialize the Effective Date by notifying the LFA in writing of the same, which notification shall become a part of this Franchise.

2.4 *Termination Generally:* Notwithstanding any provision herein to the contrary, Franchisee may terminate this Agreement and all obligations hereunder at any time during the term of this Agreement for any reason, in Franchisee's sole discretion, upon sixty (60) days' written notice to the LFA.

2.5. *Modification/Termination Based on VSP Requirements:*

2.5.1 If there is a change in federal, state, or local law that reduces any material financial and/or operational obligation that the LFA has required from or imposed upon a VSP, or if the LFA enters into any franchise, agreement, license, or grant of authorization to a VSP to provide Video Programming services to residential subscribers in the LFA with terms or conditions materially less burdensome than those imposed by this Franchise, Franchisee and the LFA shall, within sixty (60) days of the LFA's receipt of Franchisee's written notice, commence negotiations to modify this Franchise to create reasonable competitive equity between Franchisee and such other VSPs. Any modification of the Franchise pursuant to the terms of this section shall not trigger the requirements of Subpart 892-1 of the NY PSC rules and regulations.

2.5.2 Franchisee's notice pursuant to Section 2.5.1. shall specify the change in law and the resulting change in obligations. Franchisee shall respond to reasonable information requests from the LFA, as may be necessary to review the change in obligations resulting from the cited law.

2.5.3 In the event the parties do not reach mutually acceptable agreement on a modification requested by Franchisee, Franchisee shall, at any time and in its sole discretion, have the option of exercising any of the following actions:

a. Commence franchise renewal proceedings in accordance with 47 U.S.C. §546 with the Franchise term being accelerated, thus being deemed to expire thirty-six (36) months from the date of Franchisee's written notice to seek relief hereunder;

b. Terminate the franchise within two (2) years from notice to the LFA;

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c. If agreed by both parties, submit the matter to commercial arbitration by a mutually-selected arbitrator in accordance with the rules of the American Arbitration Association; or

d. Submit the matter to mediation by a mutually-acceptable mediator.

2.6. *Grant Not Exclusive:* The Franchise and the rights granted herein to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the LFA reserves the right to grant other franchises for similar uses or for other uses of the Public Rights-of-Way, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise. Any such rights which are granted shall not adversely impact the authority as granted under this Franchise and shall not interfere with existing facilities of the Cable System or Franchisee's FTTP Network.

2.7. *Franchise Subject to Federal and State Law:* Notwithstanding any provision to the contrary herein, this Franchise is subject to and shall be governed by all applicable provisions of federal and state law as it may be amended, including but not limited to the Communications Act.

2.8. *No Waiver:*

2.8.1. The failure of the LFA on one or more occasions to exercise a right under this Franchise, the Cable Law, or other applicable state or federal law, or to require compliance or performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance of this Agreement, nor shall it excuse Franchisee from compliance or performance, unless such right or such compliance or performance has been specifically waived in writing.

2.8.2. The failure of the Franchisee on one or more occasions to exercise a right under this Franchise, the Cable Law, or other applicable state or federal law, or to require performance under this Franchise, shall not be deemed to constitute a waiver of such right or a waiver of performance of this Agreement, nor shall it excuse the LFA from performance, unless such right or such performance has been specifically waived in writing.

2.9. *Construction of Agreement:*

2.9.1. The provisions of this Franchise shall be liberally construed to effectuate their objectives.

2.9.2. Nothing herein shall be construed to limit the scope or applicability of Section 625 of the Communications Act, 47 U.S.C. § 545, as amended.

2.10. *Compliance with Federal and State Privacy Laws:* Franchisee shall comply with the privacy provisions of Section 631 of the Communications Act and all other applicable federal and state privacy laws and regulations. The parties agree that, during the term hereof, Franchisee shall not be subject to any local laws or ordinances which conflict with such applicable

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federal and/or state privacy laws, or which would impose additional or distinct requirements upon Franchisee with respect to Subscriber privacy other than those which are expressly set forth in applicable federal and/or state privacy laws.

2.11. *Police Powers:* Nothing in this Agreement shall be construed to prohibit the LFA's reasonable, necessary and lawful exercise of its police power including, without limitation, in addition to the implementation and enforcement of the provisions of this Agreement and existing applicable laws and regulations, the enactment, adoption, implementation and enforcement of such additional laws and regulations as the LFA may deem necessary in the exercise of its police power; provided, however, that such laws and regulations are reasonable, not materially in conflict with the privileges granted in this Franchise and consistent with all applicable federal and state laws, rules, regulations and orders.

2.12. *Restoration of Municipal Property:* Any municipal property damaged or destroyed shall be promptly repaired or replaced by the Franchisee and restored to pre-existing condition.

2.13. *Restoration of Subscriber Premises:* The Franchisee shall ensure that Subscriber premises are restored to pre-existing condition if damaged by the Franchisee's employees or agents in any respect in connection with the installation, repair or disconnection of Cable Service.

3. **PROVISION OF CABLE SERVICE**

3.1. *Franchise Area:*

3.1.1. *Franchise Area:* Subject to the issuance of all necessary permits by the LFA, Franchisee shall continue to offer Cable Service to all residential households of the Franchise Area and may make Cable Service available to businesses in the Franchise Area, except, in accordance with NY PSC rules and regulations: (A) for periods of Force Majeure; (B) for periods of delay caused by the LFA; (C) for periods of delay resulting from Franchisee's inability to obtain authority to access rights-of-way in the Franchise Area; (D) in areas where developments or buildings are subject to claimed exclusive arrangements with other providers; (E) in areas, developments, buildings or other residential dwelling units where Franchisee cannot gain access after good faith efforts, including, but not limited to, circumstances where Franchisee cannot access the area, development, or building by using Franchisee's existing network pathways and which would thus require the construction of new trunk, feeder, or distribution lines in accordance with NY PSC rules and regulations; (F) in areas, developments, buildings or other residential dwelling units where the provision of Cable Service is economically infeasible because such provision requires nonstandard facilities which are not available on a commercially reasonable basis, in accordance with NY PSC rules and regulations; (G) in areas where the occupied residential household density does not meet the density and other requirements set forth in Sub-Subsection 3.1.1.1. and Section 3.2; and (H) in areas, developments, buildings or other residential dwelling units that are not habitable or have not been constructed as of the Effective Date.

3.1.1.1. *Density Requirement:* Subject to 3.1.1 above, Franchisee shall make Cable Services available to residential dwelling units in all areas of the Franchise Area

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where the average density is equal to or greater than twenty-five (25) occupied residential dwelling units per mile as measured in strand footage from the nearest technically feasible point on the active FTTP Network trunk or feeder line.

3.2. *Availability of Cable Service:* Franchisee shall make Cable Service available to all residential dwelling units and may make Cable Service available to businesses within the Franchise Area in conformance with Section 3.1, and Franchisee shall not discriminate between or among any individuals in the availability of Cable Service or based upon the income in a local area. In the areas in which Franchisee shall provide Cable Service, Franchisee shall be required to connect, at Franchisee's expense, other than a standard installation charge, all residential dwelling units that are within one hundred fifty (150) feet of aerial trunk or feeder lines not otherwise already served by Franchisee's FTTP Network. Franchisee shall be allowed to recover, from a Subscriber that requests such connection, the actual costs incurred for residential dwelling unit connections that exceed one hundred fifty (150) feet or are in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile and the actual costs incurred to connect any non-residential dwelling unit Subscriber, provided, however, that Franchisee may seek a waiver of any requirement that it extend service to any party requesting the same in an area with a density of less than twenty-five (25) occupied residential dwelling units per mile if such would not be possible within the limitations of economic feasibility. For underground installations, Franchisee shall charge the Subscriber Franchisee's actual costs. Such costs shall be submitted to said Subscriber in writing before installation is begun.

3.3. *Cable Service to Public Buildings:* In accordance with applicable provisions of the FCC's 2019 Third Report and Order In the Matter of Implementation of Section 621 of the Cable Act (the "621 Order"), within a reasonable period of time following the Effective Date, the Franchisee shall provide written notice to the LFA regarding the manner and process by which the parties shall implement the 621 Order's requirements regarding the provision of free or discounted Cable Service to public buildings under a franchise agreement. If there is a final determination or ruling of any agency or court having jurisdiction, after exhaustion of all appeals related thereto, reversing the 621 Order such that the provision of free or discounted Cable Service to public buildings pursuant to a cable franchise should no longer be included in the calculation of franchise fees subject to the five percent (5%) statutory cap under the Communications Act, then, subject to Section 3.1, if requested in writing by the LFA within sixty (60) days following such ruling, Franchisee shall provide, without charge within the Franchise Area, one aerial service outlet activated for Basic Service to each public school and public library, and such other buildings used for municipal purposes as may be designated by the LFA as provided in Exhibit A attached hereto; provided, however, that if it is necessary to extend Franchisee's aerial trunk or feeder lines more than five hundred (500) feet solely to provide service to any such school or public building, the LFA shall have the option either of paying Franchisee's direct costs for such aerial extension in excess of five hundred (500) feet, or of releasing Franchisee from the obligation to provide service to such school or public building. Furthermore, Franchisee shall be permitted to recover, from any school or public building owner entitled to free service, the direct cost of installing, when requested to do so, more than one outlet, or concealed inside wiring, or a service outlet requiring more than five hundred (500) feet of drop cable; provided, however, that Franchisee shall not charge for the provision of Basic Service to the additional service outlets once installed. For underground installations, Franchisee shall charge the recipient Franchisee's actual costs. Such costs shall be

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submitted to said recipient in writing before installation is begun. Cable Service may not be resold or otherwise used in contravention of Franchisee's rights with third parties respecting programming. Equipment provided by Franchisee, if any, shall be replaced at retail rates if lost, stolen or damaged. The parties hereto agree that the exercise of any conditional obligations set forth in this Section 3.3 shall not constitute a modification or amendment of the Franchise within the meaning of Subpart 892-1 of the NY PSC rules and regulations.

3.4. *Contribution in Aid:* Notwithstanding the foregoing, Franchisee shall comply at all times with the requirements of Section 895.5 of the NY PSC rules and regulations.

4. **SYSTEM FACILITIES**

4.1. *Quality of Materials and Work:* Franchisee shall construct and maintain its System using materials of good and durable quality, and all work involved in the construction, installation, maintenance and repair of the Cable System shall be performed in a safe, thorough and reliable manner.

4.2. *System Characteristics:* During the term hereof Franchisee's Cable System shall meet or exceed the following requirements:

4.2.1. The System shall be operated with an initial digital carrier passband between 50 and 860 MHz and shall provide for a minimum channel capacity of not less than 77 channels on the Effective Date.

4.2.2. The System shall be operated to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

4.3. *Interconnection:* The Franchisee shall operate its Cable System so that it may be interconnected with other cable systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.4. *Emergency Alert System:* Franchisee shall comply with the Emergency Alert System ("EAS") requirements of the FCC and applicable state and local EAS Plans, in order that emergency messages may be distributed over the System.

5. **PEG SERVICES**

5.1. *PEG Set Aside:*

5.1.1. In order to ensure universal availability of public, educational and government programming, Franchisee shall provide capacity on its Basic Service tier for up to one (1) dedicated Public Access Channel, one (1) dedicated Educational Access Channel, and up to one (1) dedicated Government Access Channel (collectively, "PEG Channels").

5.1.2. The LFA hereby authorizes Franchisee to transmit such PEG channel programming within and without LFA jurisdictional boundaries. Franchisee specifically reserves the right to make or change channel assignments in its sole discretion. If a PEG Channel

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provided under this Article is not being utilized by the LFA, Franchisee may utilize such PEG Channel, in its sole discretion, until such time as the LFA elects to utilize the PEG Channel for its intended purpose. In the event that the LFA determines to use PEG capacity, the LFA shall provide Franchisee with prior written notice of such request in accordance with NY PSC rules and regulations.

5.1.3. Franchisee shall provide the technical ability to play back pre-recorded programming provided to Franchisee consistent with this Section. Franchisee shall transmit programming consistent with the dedicated uses of PEG Access Channels. Franchisee shall comply at all times with the requirements of Section 895.4 of the NY PSC rules and regulations.

5.2. *PEG Access Interconnection:*

5.2.1. The Franchisee shall continue to connect to equipment owned by the LFA and/or the PEG Access Designee at Tappan Zee High School, 15 Dutch Hill Road, Orangeburg, NY 10962 and Town Hall, 26 Orangeburg Road, Orangeburg, NY 10962 (the "Interconnection Sites"). The LFA or, if designated by the LFA in writing to Franchisee, the PEG Access Designee, shall be required to pay Franchisee for all costs associated with: (i) any equipment upgrade where the need for the upgrade is initiated by the LFA or PEG Access Designee; (ii) relocating any connection where the need for relocation is initiated by the LFA or PEG Access Designee; (iii) re-installing and/or replacing any connection at an existing location where the need for such re-installation and/or replacement is initiated by the LFA or PEG Access Designee; or (iv) installing any new connection if initiated by the LFA or PEG Access Designee; provided, however, that LFA and/or PEG Access Designee responsibility for the foregoing costs is subject to the LFA's express written consent, and subject further to Franchisee's prior disclosure of such costs and prior consent to same by the LFA or PEG Access Designee.

5.2.2. The demarcation point between the Franchisee's signal processing equipment (which the Franchisee shall own, install and maintain) and the LFA's PEG equipment shall be at the output of the LFA's signal processing equipment at the Interconnection Sites. The LFA and/or the PEG Access Designee shall be solely responsible for operating its switching equipment and the picture and audio quality of all PEG access programming up to the demarcation point and for ensuring all PEG access programming is inserted on the appropriate upstream PEG Access Channel. All PEG access programming shall be transmitted to the Franchisee in baseband, SD-SDI format, or HD-SDI format with either mono or stereo audio signals, and with signals received by Franchisee in stereo cablecast by Franchisee in stereo. Notwithstanding the foregoing, the Franchisee shall not be obligated to provide the LFA or PEG Access Designee with either cablecast equipment and facilities or the personnel responsible for maintaining and operating equipment and facilities on the LFA's side of the demarcation point and used to generate or administer any PEG access signals, except as necessary to implement the Franchisee's responsibilities specified herein. The LFA and the Franchisee shall work together in good faith to resolve any connection issues. If the LFA issues a franchise to, or renews a franchise with, a competing VSP, the competing VSP may not connect its system to Franchisee's System for the purposes of obtaining PEG access programming from the PEG Access Channels transmitted on Franchisee's System without Franchisee's prior written consent.

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5.2.3. If Franchisee makes changes to the Cable System that require improvements to the access facilities or equipment in order to permit the PEG access equipment and facilities to continue to be used as they were intended under the terms of this Agreement, then Franchisee shall, without charge to the LFA, make such changes in either the equipment and facilities referred to in Subsection 5.2.3 or in the Franchisee's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

5.3. *PEG Grant:* **[TO BE DISCUSSED]**

5.4. *Indemnity for PEG:* The LFA shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Franchisee to transmit programming consistent with this Agreement and to defend and hold harmless Franchisee and the LFA from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel. The LFA shall establish rules and regulations for use of PEG facilities, consistent with, and as required by, 47 U.S.C. §531.

5.5. *Recovery of Costs Recovery of Costs:* Consistent with applicable law, Franchisee shall be permitted to externalize, line-item, or otherwise pass-through to Subscribers the costs of the PEG Grant and other costs arising from the provision of PEG services, interconnection and any other franchise-related costs and to include such costs as separately billed line items on each Subscriber's bill.

5.6. *No PEG Access Designee Rights:* The LFA and the Franchisee herein acknowledge and agree that any PEG Access Designee is not a party to this Franchise and that any provisions herein that may affect a PEG Access Designee are not intended to create any rights on behalf of any PEG Access Designee.

6. **FRANCHISE FEES**

6.1. *Payment to LFA:* Franchisee shall pay to the LFA a Franchise Fee of five percent (5%) of annual Gross Revenue (the "Franchise Fee"). In accordance with Title VI, the twelve (12) month period applicable under the Franchise for the computation of the Franchise Fee shall be a calendar year. Such payments shall be made no later than forty-five (45) days following the end of each calendar quarter. Franchisee shall be allowed to submit or correct any payments that were incorrectly omitted, and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise Fee remittances within ninety (90) days following the close of the calendar year for which such payments were applicable. Late payments for Franchise Fees shall be subject to interest at the then-current rate set forth in Section 5004 of Article 50 of the New York Civil Practice Law and Rules (which as of the date of execution of this Agreement is nine percent (9%) per annum) from the due date to the date that such payment is made.

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6.2. *Supporting Information:* Each Franchise Fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation. Subject to the confidentiality requirements of Section 7.1 and the audit requirements under Section 6.3 of this Franchise, the Franchisee shall be responsible for making available to the LFA for inspection and audit, all records necessary to confirm the accurate payment of Franchise Fees, whether the records are held by the Franchisee, an Affiliate, or any other entity that collects or receives funds related to the Franchisee's Cable Services operation in the Franchise Area subject to the payment of Franchise Fees under this Agreement, including, by way of illustration and not limitation, any entity that sells advertising on the Franchisee's behalf.

6.3. *Audit:*

6.3.1. LFA may conduct an audit related to the Franchise Fee payments required under this Agreement no more than once every three (3) years during the term. Any audit shall be initiated through written notice to Franchisee by LFA, and LFA or auditor employed by LFA shall submit its complete request for records within one (1) month of LFA providing written notice of an audit. Subject to the confidentiality provisions of Section 7.1, and execution of a non-disclosure agreement with an auditor directly employed by LFA, all records necessary for an audit shall be made available by Franchisee to LFA or its auditor for inspection at an office of Franchisee.

6.3.2. Any such audit conducted by LFA or auditor employed by the LFA shall be completed in an expeditious and timely manner. If upon completion of the audit, LFA does not make a claim for additional payments, then LFA shall provide Franchisee with written documentation of closure of the audit.

6.3.3. If the results of an audit indicate an overpayment or underpayment of Franchise Fees, as indicated in a report to be provided by the auditor to Franchisee, the parties agree that such overpayment or underpayment shall be returned to the proper party within sixty (60) days of written notice.

6.3.4. All audits must be conducted by an independent third party that is a Certified Public Accountant.

6.3.5. LFA shall not be entitled to audit Franchisee until LFA also requires that all cable operators providing Cable Service in the Franchise Area are audited under terms that are substantially similar to the provisions of this section.

6.4. *Limitation on Franchise Fee Actions:* The parties agree that the period of limitation for recovery of any Franchise Fee payable hereunder shall be six (6) years from the date on which payment by Franchisee is due, but cannot exceed the date of records retention reflected in Section 7.

6.5. *Bundled Services:* If Cable Services subject to the Franchise Fee required under this Article 6 are provided to Subscribers in conjunction with Non-Cable Services, then the calculation of Gross Revenues shall be adjusted, if needed, to include only the value of the Cable

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Services billed to Subscribers, as reflected on the books and records of the Franchisee in accordance with FCC rules, regulations, standards or orders.

7. REPORTS AND RECORDS

7.1. *Open Books and Records*: Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days written notice to the Franchisee, the LFA shall have the right to inspect Franchisee's books and records pertaining to the operation of the Cable System or Franchisee's provision of Cable Service in the Franchise Area at any time during Franchisee's regular business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section or subsection of the Franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the LFA. Franchisee shall make the necessary books and records available for such inspection at a mutually agreed upon location. Franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than five (5) years. Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of Cable Service in the Franchise Area. Subject to the requirements of the New York Freedom of Information Law ("FOIL"), the LFA shall treat any information disclosed by Franchisee as confidential under Section 87(2)(d) of the New York Public Officers Law, and shall disclose it only to employees, representatives, and agents thereof who have a need to know and who agree to maintain the confidentiality of all such information, or only as necessary in order to enforce the provisions hereof. For purposes of this Section, "proprietary or confidential" information includes, but is not limited to: information related to the Cable System design; trade secrets; Subscriber lists; marketing plans; financial information unrelated to the calculation of Franchise Fees; or other information that is reasonably determined by the Franchisee to be competitively sensitive. If the LFA receives a request under FOIL or similar law for the disclosure of information that Franchisee has designated as confidential, trade secret or proprietary, the LFA shall notify Franchisee of such request and cooperate with Franchisee to enforce the provisions of this paragraph to the fullest extent permitted by law. LFA shall not make public disclosure of such information if it is exempt from mandatory disclosure under FOIL or unless required by court order. Franchisee shall not be required to provide Subscriber information in violation of Section 631 of the Communications Act, 47 U.S.C. §551.

7.2. *Records Required*: Franchisee shall at all times maintain:

7.2.1. Records of all written complaints for a period of five (5) years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

7.2.2. Records of outages for a period of five (5) years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

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7.2.3. Records of service calls for repair and maintenance for a period of five (5) years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

7.2.4. Records of installation/reconnection and requests for service extension for a period of five (5) years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

7.2.5. A map showing the area of coverage for the provisioning of Cable Services.

7.3. *System-Wide Statistics:* Any valid reporting requirement in the Franchise may be satisfied with system-wide statistics, except those related to Franchise Fees and consumer complaints.

8. INSURANCE AND INDEMNIFICATION

8.1. *Insurance:*

8.1.1. Franchisee shall maintain in full force and effect, at its own cost and expense, during the Franchise term, the following insurance coverage:

8.1.1.1. Commercial General Liability Insurance in the amount of five million dollars (\$5,000,000) per occurrence for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Franchisee's Cable Service business in the LFA.

8.1.1.2. Commercial Automobile Liability Insurance in the amount of five million dollars (\$5,000,000) combined single limit each accident for bodily injury and property damage coverage.

8.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State of New York and Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 disease-policy limit.

8.1.1.4. Excess/Umbrella coverage of two million dollars (\$2,000,000) providing coverage above the primary commercial general liability, commercial automobile liability and employer's liability insurance required herein.

8.1.2. The LFA shall be included as an additional insured as their interest may appear under this Agreement on the Commercial General Liability and Commercial Automobile Liability policies.

8.1.3. Upon receipt of notice from its insurer, Franchisee shall provide LFA with thirty (30) days' prior written notice of such cancellation of any required coverage

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8.1.4. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A-VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.1.5. Upon written request, Franchisee shall deliver to the LFA Certificates of Insurance showing evidence of the required coverage.

8.1.6. The policy amounts and limits required herein are not intended, and shall not be, construed to constitute a limitation on Franchisee's liability in connection with any claim, including a claim of indemnification..

8.2. *Indemnification:*

8.2.1. Franchisee agrees to indemnify the LFA for, and hold it harmless from, all liability, damage, cost or expense arising from claims of injury to persons or damage to property occasioned by reason of any conduct undertaken pursuant to the Franchise, provided that the LFA shall give Franchisee reasonable written notice of a claim or action for which it seeks indemnification pursuant to this Subsection; and in any event the LFA shall provide Franchisee with such written notice within a period of time that allows Franchisee to take action to avoid entry of a default judgment and does not prejudice Franchisee's ability to defend the claim or action. Notwithstanding the foregoing, Franchisee shall not indemnify the LFA for any damages, liability or claims resulting from the willful misconduct or negligence of the LFA, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Franchisee, its officers, agents, employees, attorneys, consultants, independent contractors in connection with PEG Access or EAS.

8.2.2. With respect to Franchisee's indemnity obligations set forth in Subsection 8.2.1, Franchisee shall provide the defense of any claims brought against the LFA by selecting counsel of Franchisee's choice to defend the claim, subject to the consent of the LFA, which shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the LFA from cooperating with the Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, that after consultation with the LFA, Franchisee shall have the right to defend, settle or compromise any claim or action arising hereunder, and Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the terms of any such proposed settlement includes the release of the LFA and the LFA does not consent to the terms of any such settlement or compromise, Franchisee shall not settle the claim or action but its obligation to indemnify the LFA shall in no event exceed the amount of such settlement.

8.2.3. The LFA shall be responsible for its own acts of willful misconduct, negligence, or breach, subject to any and all defenses and limitations of liability provided by law. The Franchisee shall not be required to indemnify the LFA for acts of the LFA which constitute willful misconduct or negligence on the part of the LFA, its officers, employees, agents, attorneys, consultants, independent contractors or third parties.

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9. TRANSFER OF FRANCHISE

Subject to Section 617 of the Communications Act, 47 U.S.C. §537, as amended, no Transfer of the Franchise shall occur without the prior consent of the LFA, provided that such consent shall not be unreasonably withheld, delayed or conditioned. In considering an application for the Transfer of the Franchise, the LFA may consider the applicant's: (i) technical ability; (ii) financial ability; (iii) good character; and (iv) other qualifications necessary to continue to operate the Cable System consistent with the terms of the Franchise. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, or interest of the Franchisee in the Franchise or Cable System in order to secure indebtedness, or for transactions otherwise excluded under Section 1.30 above.

10. RENEWAL OF FRANCHISE

10.1. *Governing Law:* The LFA and Franchisee agree that any proceedings undertaken by the LFA that relate to the renewal of this Franchise shall be governed by and comply with the provisions of Section 12.12 below, the Cable Law and Section 626 of the Communications Act, 47 U.S.C. §546, as amended.

10.2. *Needs Assessment:* In addition to the procedures set forth in Section 626 of the Communications Act, the LFA shall notify Franchisee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of Franchisee under the then current Franchise term. Such assessments shall be provided to Franchisee by the LFA promptly so that Franchisee will have adequate time to submit a proposal under 47 U.S.C. §546 and complete renewal of the Franchise prior to expiration of its term.

10.3. *Informal Negotiations:* Notwithstanding anything to the contrary set forth herein, Franchisee and the LFA agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the LFA and Franchisee may agree to undertake informal negotiations regarding renewal of the then current Franchise and the LFA may grant a renewal thereof.

10.4. *Consistent Terms:* Franchisee and the LFA consider the terms set forth in this Article 10 to be consistent with the express provisions of Section 626 of the Communications Act and the Cable Law.

11. ENFORCEMENT AND TERMINATION OF FRANCHISE

11.1. *Notice of Violation:* If at any time the LFA believes that Franchisee has not complied with the terms of the Franchise, the LFA shall informally discuss the matter with Franchisee. If these discussions do not lead to resolution of the problem in a reasonable time, the LFA shall then notify Franchisee in writing of the exact nature of the alleged noncompliance in a reasonable time (for purposes of this Article, the "Noncompliance Notice").

11.2. *Franchisee's Right to Cure or Respond:* Franchisee shall have sixty (60) days from receipt of the Noncompliance Notice to: (i) respond to the LFA, if Franchisee contests (in whole or in part) the assertion of noncompliance; (ii) cure such noncompliance; or (iii) in the

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event that, by its nature, such noncompliance cannot be cured within such sixty (60) day period, initiate reasonable steps to timely remedy such noncompliance and notify the LFA of the steps being taken and the date by which Franchisee projects that it will complete cure of such noncompliance. Upon cure of any noncompliance, the LFA shall provide written confirmation that such cure has been effected.

11.3. *Public Hearing:* The LFA shall schedule a public hearing if the LFA seeks to continue its investigation into the alleged noncompliance (i) if Franchisee fails to respond to the Noncompliance Notice pursuant to the procedures required by this Article, or (ii) if Franchisee has not remedied the alleged noncompliance within sixty (60) days or the date projected pursuant to Section 11.2(iii) above. The LFA shall provide Franchisee at least sixty (60) calendar days prior written notice of such public hearing, which will specify the time, place and purpose of such public hearing, and provide Franchisee the opportunity to be heard.

11.4. *Enforcement:* Subject to Section 12.12 below and applicable federal and state law, in the event the LFA, after the public hearing set forth in Section 11.3, determines that Franchisee is in default of any provision of this Franchise, the LFA may:

11.4.1. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

11.4.2. Commence an action at law for monetary damages or seek other equitable relief; or

11.4.3. In the case of a substantial noncompliance with a material provision of this Franchise, seek to revoke the Franchise in accordance with Section 11.5.

11.5. *Revocation:* Should the LFA seek to revoke this Franchise after following the procedures set forth above in this Article, including the public hearing described in Section 11.3, the LFA shall give written notice to Franchisee of such intent. The notice shall set forth the specific nature of the noncompliance. The Franchisee shall have ninety (90) days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the LFA has not received a satisfactory response from Franchisee, it may then seek termination of the Franchise at a second public hearing. The LFA shall cause to be served upon the Franchisee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

11.5.1. At the designated public hearing, Franchisee shall be provided a fair opportunity for full participation, including the rights to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the LFA, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing.

11.5.2. Following the second public hearing, Franchisee shall be provided up to thirty (30) days to submit its proposed findings and conclusions to the LFA in writing and thereafter the LFA shall determine (i) whether an event of default has occurred under this

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Franchise; (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Franchisee. The LFA shall also determine whether it will revoke the Franchise based on the information presented, or, where applicable, grant additional time to the Franchisee to effect any cure. If the LFA determines that it will revoke the Franchise, the LFA shall promptly provide Franchisee with a written determination setting forth the LFA's reasoning for such revocation. Franchisee may appeal such written determination of the LFA to an appropriate court, which shall have the power to review the decision of the LFA *de novo*. Franchisee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Franchisee's receipt of the written determination of the LFA.

11.5.3. The LFA may, at its sole discretion, take any lawful action that it deems appropriate to enforce the LFA's rights under the Franchise in lieu of revocation of the Franchise.

11.6. *Abandonment of Service*: Franchisee shall not abandon any Cable Service or portion thereof without the LFA's prior written consent as provided in the Cable Law.

12. **MISCELLANEOUS PROVISIONS**

12.1. *Actions of Parties*: In any action by the LFA or Franchisee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

12.2. *Binding Acceptance*: This Agreement shall bind and benefit the parties hereto and their respective receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof subject to NY PSC rules and regulations.

12.3. *Preemption*: In the event that federal or state law, rules, or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the LFA.

12.4. *Force Majeure*: Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by a Force Majeure; provided, however, that in the event of a Force Majeure, the time specified for performance of Franchisee's obligations hereunder shall extend for such reasonable time thereafter as may be agreed by the LFA and Franchisee.

12.4.1. Furthermore, the parties hereby agree that it is not the LFA's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal

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negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee that outweigh the benefit to be derived by the LFA and/or Subscribers.

12.5. *Delivery of Payments:* Franchisee may use electronic funds transfer to make any payments to the LFA required under this Agreement

12.6. *Notices:* Unless otherwise expressly stated herein, notices required under the Franchise shall be mailed first class, postage prepaid, to the addressees below. Each party may change its designee by providing written notice to the other party.

12.6.1. Notices to Franchisee shall be mailed to:

Verizon
1300 I Street NW
Washington, DC 20005
Attention: Tonya Rutherford, VP and Deputy General Counsel

12.6.2. Notices to the LFA shall be mailed to:

Town Supervisor
Town of Orangetown
Town Hall
26 Orangeburg Road
Orangeburg, New York 10962

12.6.3. with a copy to:

Town Attorney
Town of Orangetown
Town Hall
26 Orangeburg Road
Orangeburg, New York 10962

12.7. *Entire Agreement:* This Franchise and the Exhibits hereto constitute the entire agreement between Franchisee and the LFA and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof. Any local laws or parts of local laws that materially conflict with the provisions of this Agreement are superseded by this Agreement.

12.8. *Amendments and Modifications:* Amendments and/or modifications to this Franchise shall be mutually agreed to in writing by the parties and subject to the approval of the NY PSC pursuant to the Cable Law, except as provided herein.

12.9. *Captions:* The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the articles, sections and

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provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

12.10. *Severability*: If any section, subsection, sub-subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

12.11. *Recitals*: The recitals set forth in this Agreement are incorporated into the body of this Agreement as if they had been originally set forth herein.

12.12. *FTTP Network Transfer Prohibition*: Under no circumstance including, without limitation, upon expiration, revocation, termination, denial of renewal of the Franchise or any other action to forbid or disallow Franchisee from providing Cable Services, shall Franchisee or its assignees be required to sell any right, title, interest, use or control of any portion of Franchisee's FTTP Network including, without limitation, the Cable System and any capacity used for Cable Service or otherwise, to the LFA or any third party. Franchisee shall not be required to remove the FTTP Network or to relocate the FTTP Network or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Franchisee from providing Cable Services. This provision is not intended to contravene leased access requirements under Title VI or PEG requirements set out in this Agreement.

12.13. *NY PSC Approval*: This Franchise is subject to the approval of the NY PSC. Franchisee shall file an application for such approval with the NY PSC within sixty (60) days after the date hereof. Franchisee shall also file any necessary notices with the FCC.

12.14. *Rates and Charges*: The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law.

12.15. *Publishing Information*: LFA hereby requests that Franchisee omit publishing information specified in 47 C.F.R. §76.952 from Subscriber bills.

12.16. *Employment Practices*: Franchisee will not refuse to hire, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, or sex.

12.17. *Customer Service*: Franchisee shall comply with the consumer protection and customer service standards set forth in Parts 890 and 896 of the NY PSC rules and regulations.

12.18. *Performance Review*:

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12.18.1. The LFA may conduct a performance review related to Franchisee's performance of its obligations under this Agreement no more than once every three (3) years during the term. Any performance review shall be initiated through written notice to Franchisee by the LFA and the LFA or consultant employed by the LFA shall submit its complete request for records within one (1) month of the LFA providing written notice of a performance review. Subject to the confidentiality provisions of Section 7.1 and execution of a non-disclosure agreement with a consultant directly employed by the LFA, all records necessary for any such performance review shall be made available by Franchisee to the LFA or its consultant for inspection at an office of Franchisee.

12.18.2. The LFA shall not be entitled to conduct a performance review of Franchisee until the LFA also requires that all cable operators providing Cable Service in the Franchise Area are subject to a performance review under terms that are substantially similar to the provisions of this article.

12.19. *No Third Party Beneficiaries:* Except as expressly provided in this Agreement, this Agreement is not intended to, and does not, create any rights or benefits on behalf of any Person other than the parties to this Agreement.

12.20. *LFA Official:* The Supervisor of the LFA is the LFA official that is responsible for the continuing administration of this Agreement.

12.21. *No Waiver of LFA's Rights:* Notwithstanding anything to the contrary in this Agreement, no provision of this Agreement shall be construed as a waiver of the LFA's rights under applicable federal and state law.

12.22 *Counterparts:* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Further, this Agreement may be executed by facsimile, email, electronic signature or other electronic means, and so executed shall have the full force and legal effect as an executed original of this Agreement.

[SIGNATURE PAGE FOLLOWS]

VERIZON PROPRIETARY & CONFIDENTIAL DRAFT 10/8/21

AGREED TO THIS ____ DAY OF _____, 2021.

LFA:

TOWN OF ORANGETOWN

By: _____

Title:

FRANCHISEE:

VERIZON NEW YORK INC.

By: _____

Title:

Approved as to Form:

Verizon Law Department

Date: _____

SIGNATURE PAGE

Orangetown/Verizon New York Inc.

Franchise Renewal Agreement/October, 2021

EXHIBITS

Exhibit A: Municipal Buildings to be Provided Free Cable Service (Subject to Section 3.3)

Exhibit List

Orangetown/Verizon New York Inc.
Franchise Renewal Agreement/October, 2021

EXHIBIT A
MUNICIPAL BUILDINGS TO BE PROVIDED FREE CABLE SERVICE
(Subject to Section 3.3)

Pearl River School District
District Administration Offices 845/ 620-3900
275 East Central Avenue
Pearl River, NY 10965

Evans Park Elementary School 845/ 620-3950
40 Marion Place
Pearl River, New York 10965

Franklin Avenue Elementary School 845/ 620-3965
48 Franklin Avenue
Pearl River, New York 10965

Lincoln Avenue Elementary School 845/ 620-3850
115 Lincoln Avenue
Pearl River, New York 10965

Nauraushaun School 845/ 620-3864
664 Orangeburg Road
Pearl River, New York 10965

Pearl River High School 845/ 620-3800
275 East Central Avenue
Pearl River, New York 10965

Pearl River Middle School 845/ 620-3870
520 Gilbert Avenue
Pearl River, New York 10965

So. Orangetown Central School District 845/680-1000
Central Administration
160 Wan Wyck
Blauvelt, NY 10913

Palisades Children's Enrichment Center 845/398-22
680 Oak Tree Road
Palisades, NY 10964

VERIZON PROPRIETARY & CONFIDENTIAL DRAFT 10/8/21

William O. Schaefer Elementary 845/ 680-1300
140 Lester Drive
Tappan, NY 10983

S. O. Early Childhood Program 845/ 680-1300
at W.O. Schaefer
140 Lester Drive
Tappan, NY 10983

Cottage Lane Elementary 845/ 680-1500
120 Cottage Lane
Blauvelt, NY 10913

Tappan Zee Elementary 845/ 680-1400
561 Route 9W
Piermont, NY 10976

South Orangetown Middle School 845/ 680-1100
160 Wan Wyck
Blauvelt, NY 10913

Tappan Zee High School 845/ 680-1600
15 Dutch Hill Road
Orangeburg, NY 10962

Blauvelt Volunteer Fire Co.
548 Western Highway
Blauvelt, NY 10913-1344

Orangeburg Fire Department
61 Dutch Hill Rd
Orangeburg, New York 10962

Orangeburg Volunteer Fire Assn.
23 Greenbush Road
Orangeburg, New York 10962

Pearl River Fire District
58 East Central Ave.
Pearl River, New York 10965

Excelsior Fire Engine Co.
1 Mike Kernan Drive
Pearl River, New York 10965

VERIZON PROPRIETARY & CONFIDENTIAL DRAFT 10/8/21

John Paulding Engine Co. #1

P.O. Box 164 520 Route 340
Sparkill, New York 10976

Tappan Fire Department

300 Western Highway, PO Box 525
Tappan, New York 10983

Volunteer Fire Assn. of Tappan

123 Washington Street
Tappan, New York 10983

Pearl River Alumni Ambulance Corps

3 North Main Street
Pearl River, NY 10965

Rockland Paramedic Services Medic 21

141 Blaisdell Road
Orangeburg, NY 10962

South Orangetown Ambulance Corps

70 Independence Avenue
Tappan, NY 10983

Blauvelt Free Library

86 South Western Highway
Blauvelt, New York 10913

Orangeburg Library

Old Greenbush Road
Orangeburg, New York 10962

Palisades Free Library

Closter Road
Palisades, New York 10964

Pearl River Public Library

80 Franklin Avenue
Pearl River, New York 10965

Tappan Library

93 Main Street
Tappan, New York 10983

VERIZON PROPRIETARY & CONFIDENTIAL DRAFT 10/8/21

Town Hall 845/ 359-5100
26 Orangeburg Road
Orangeburg, NY 10962

Orangetown Police Department 845/ 359-3700
26 Orangeburg Road
Orangeburg, NY 10962

Police Booth
East Main and East Central Avenue
Pearl River, NY 10962

Building Department 845/ 359-8410
20 Greenbush Road
Orangeburg, NY 10962

Fire Prevention Services 845/ 359-8410
20 Greenbush Road
Orangeburg, NY 10962

Highway Department 845/ 359-6500
119 Route 303
Orangeburg, NY 10962

Dept. of Environmental Management & Engineering 845/ 359-6502
(to the east of the Highway Department)
119 Route 303
Orangeburg, NY 10962

Parks & Recreation 845/ 359-6503
81 Hunt Road
Orangeburg, NY 10962

Park Maintenance 845/ 359-0669
159 Hunt Road
Orangeburg, NY 10962

Blue Hill Golf Course 845/ 735-2094
285 Blue Hill Road
Pearl River, NY 10965

Broadacres Golf Course 845/ 359-8218
140 Old Orangeburg Road
Orangeburg, NY 10962

VERIZON PROPRIETARY & CONFIDENTIAL DRAFT 10/8/21

Orangetown Historical Museum 845/ 735-0429
213 Blue Hill Road
Pearl River, NY

Orangetown Historical Museum
Blaisdell Road and Veterans Highway
Pearl River, NY 10965

**LOCAL LAW NO. ___ OF 2022 OF THE
INCORPORATED TOWN OF ORANGETOWN, NEW YORK
TOWN BOARD TO AMEND CHAPTER 31C TO AUTHORIZE ELECTRIC VEHICLE
CHARGING/DISPLAY KIOSKS IN CERTAIN ZONES.**

Be it enacted by the Town Board of the Town of Orangetown as follows:

NORMAL = EXISTING LANGUAGE THAT WILL REMAIN
BOLD TYPE = PROPOSED ADDITIONS
~~STRIKEOUTS~~ = PROPOSED DELETIONS

Section 1. The Town Board hereby amends Chapter 31C entitled “Signs” as follows:

§ 31C-4 Definitions.

....

ELECTRIC VEHICLE (“EV”) CHARGING/DISPLAY KIOSK

A combined electric vehicle charging kiosk with internally illuminated LED displays.

....

§ 31C-5 General guidance.

....

C. The signs, devices and installations listed below are prohibited anywhere in the Town of Orangetown.

- (1) Flashing, moving, animated, digital (except time, date or temperature or, for gas stations, price), or fluttering signs. (Fire departments, school districts, governmental entities, religious institutions, and civic organizations such as the Rotary Club, Lions Club or Chambers of Commerce are exempt from this prohibition). **EV Charging/Display Kiosks permitted pursuant to Section 31C-8 below are also exempt from this prohibition.**

....

§ 31C-8 EV Charging/Display Kiosks

EV Charging/Display Kiosks are allowed for permitted businesses in CC, CO, CS, LI, LIO, LO and OP zones, subject to the following conditions:

- A. **There shall be a maximum of two (2) EV Charging/Display Kiosks per property.**

- B. EV Charging/Display Kiosks shall not exceed 22.5 square feet in size and 7.5 feet in height.**
- C. EV Charging/ Display Kiosks display screen shall not exceed 9 square feet in size.**
- D. EV Charging/Display Kiosks shall be equipped with an auto-dimming feature.**
- E. EV Charging/Display Kiosks shall limit content refresh rates to no more than every eight (8) seconds.**
- F. EV Charging/Display Kiosks shall be located within 100 feet of the front façade of the business building on the site.**
- G. EV Charging/ Display Kiosks shall be setback a minimum of 70 feet from a public right of way.**

Section 2. Effective date.

The provisions of this local law shall take effect immediately upon filing with the Secretary of State.

DOG CONTROL SERVICES AGREEMENT FOR YEAR 2022

By and between

Town of Orangetown

And

Hudson Valley Humane Society for the Prevention of Cruelty to Animals

WHEREAS, the **TOWN OF ORANGETOWN**, (hereinafter “TOWN”), is a municipal corporation of the State of New York, having its principal place of business at 26 Orangeburg Road, Orangeburg, New York 10962; and

WHEREAS, **Hudson Valley Humane Society for the Prevention of Cruelty to Animals**, (hereinafter “HVHS”), is a domestic not-for-profit corporation, created and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at 200 Quaker Road, Pomona, New York 10970; and

WHEREAS, the TOWN needs dog control services including enforcement, and housing and boarding, under Article 7 of the New York State Agriculture and Markets Law and its’ Town Code; and

WHEREAS, the HVHS is a humane society, and a duly authorized society for the prevention of cruelty to animals, which has been engaged in the prevention of cruelty to animals in Rockland County, New York; and

WHEREAS, the TOWN is authorized to contract for such services with a duly incorporated society for the prevention of cruelty to animals pursuant to Article 7 of the New York Agriculture and Markets Law; and

WHEREAS, the TOWN and HVHS believe that the TOWN's contracting with HVHS for the provision of dog control services will improve the quality and level of service provided to TOWN residents; and

NOW, THEREFORE, THE TOWN AND HVHS HEREBY AGREE AS FOLLOWS:

1. TERM: This agreement will commence January 1, 2022 and shall continue through December 31, 2022.
2. SERVICES TO BE PROVIDED: The HVHS through its duly appointed agents and employees shall provide those services as per this Agreement to the TOWN for seized, lost, strayed or homeless domestic canine animals pursuant to §114 of the New York State Agriculture and Markets Law, and shall be permitted to adopt canines as set forth herein, and shall properly care for these dogs in its shelter, that shall at all times during the term hereof be under the care and charge of a competent employee, Board member or duly appointed Humane Law Enforcement officer (HLE).
3. HVHS DUTIES UNDER THIS AGREEMENT:
 - a. HVHS will act as an agent of the TOWN to enforce the provisions of the Agriculture and Markets Law §117 and Town Code Section 9-5, with respect to impoundment periods, impoundment fees, proper licensing and rabies vaccinations (as it pertains to canines only).
 - b. As agent for the TOWN, HVHS shall not release a dog to any TOWN resident without such resident providing acceptable proof of licensing and rabies vaccination.
 - c. In addition, HVHS shall not release a dog found within the TOWN to a resident of New York City or another State unless that party provides proof of license, and if not available, that party must license the dog before it can be released. Any deviations

shall be reported via written letter, fax or email from HVHS to the TOWN Animal Control Officer (ACO) for enforcement.

- d. HVHS will issue and assign a unique identification tag to every dog at no cost to the TOWN or owner; the identification tag has a unique number and provides another level of identification for the dog's safety.

4. DOG LICENSE FROM TOWN:

- a. HVHS shall be authorized to issue dog licenses on behalf of the TOWN and collect the appropriate TOWN Code license fees.
- b. HVHS shall have the TOWN permit form completed by the applicant and collect the necessary fees; and issue the tag to the applicant.
- c. The TOWN permit form and all such monies collected by HVHS on behalf of the TOWN for licensing a dog must be remitted to the TOWN Clerk by the fifteenth (15th) day of the month following the month of collection with all other required documentation.

5. FEES FOR IMPOUNDMENT/SHELTER/FEED/WATER/CARE:

- a. The TOWN shall pay to HVHS the sum of FORTY AND 00/100 (\$40.00) DOLLARS for each night the dog has been in the care of HVHS (for a maximum of FIVE (5) nights from the date of seizure) for the shelter, feed, water and care of all seized, lost, strayed or homeless canines delivered by the TOWN'S employees and TOWN residents to HVHS for impoundment and disposition. The parties agree that a "same day reclaim" is charged as the ONE (1) night minimum. Charges to the TOWN will conclude once an owner claims their animal.
- b. The owner may redeem such dog:

- i. by producing proof that such dog is, or has been, licensed in accordance with TOWN Code Section 9-6; and
 - ii. upon payment of the impoundment fees as set forth in TOWN Code Section 9-5 in the amount of FORTY AND 00/100 (\$40.00) DOLLARS for each night or one-night minimum stay for a same day reclaim for the period the canine has been in the care of HVHS;
 - iii. A receipt for any fees paid directly to the TOWN Clerk, (i.e. for impoundment and/or licensing), shall be presented to HVHS prior to the release of the animal.
 - c. With written approval from the Animal Control Office or Town Clerk's Office, TOWN hereby agrees that HVHS may collect required Impound and Boarding Fees and release an animal to its owner under extenuating circumstances..
 - d. HVHS is authorized to collect Town Code licensing fees (if necessary) and impoundment fees from the dog owner at time of redemption.
 - e. All such monies collected by HVHS on behalf of the TOWN must be remitted to the TOWN Clerk by the FIFTEENTH (15TH) day of the month subsequent to the month the monies are collected or the documents are received with all other required documentation.
6. HVHS IMPOUNDMENT DUTIES DURING REDEMPTION PERIOD:
 - a. No later than TWENTY-FOUR (24) hours, or as soon as practicable, after a companion canine animal has been seized or taken possession of, by any TOWN dog control officer, animal control officer, or peace officer acting pursuant to his or her special duties, or police officer, and comes under the care, custody and control of HVHS, then HVHS must take steps to:

- i. check such animal for all forms of identification, including, but not limited to, tags, microchips, tattoos or licenses; and
 - ii. if practicable, and if the necessary technology and equipment are available, make available to the public on the internet on a website or social media maintained by HVHS, a photograph, and a general description of the animal to assist the owner or owners in finding the animal, including the breed or breeds, if known. It is agreed that information about the animal may be withheld, however, if deemed appropriate to facilitate finding the owner or otherwise protect the safety of the animal.
- b. As soon as practicable after the seizure or taking possession of such animal potentially identifiable by a form of identification, including a license, tag, tattoo or microchip, or records or reports that are readily available of animals reported to be lost, reasonable efforts must be made to identify and provide actual notice to the owner of the animal by any means reasonably calculated to provide actual notice to the owner.
- c. The owner may redeem such dog upon payment of the impoundment fees as set forth in Town Code Section 9-5 payable to the TOWN and/or HVHS, and by producing proof that such dog is or has been licensed, and properly identified.
 - i. A receipt for any fees paid directly to the TOWN Clerk shall be presented to HVHS prior to the release of the animal.
- d. At the end of the TOWN Code established impoundment period, any identified, unidentified dog, unlicensed, unredeemed, aged, diseased or otherwise unadoptable, seized, lost, strayed or homeless domestic canine animal (in the judgment of HVHS),

unless otherwise specified by the Animal Control Officer, becomes the property of the HVHS;

- e. If the dog is not claimed at the end of the TOWN's impoundment period, the dog shall become the property of HVHS, and the TOWN will pay HVHS an additional one-time stipend of FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS towards the future care of the dog.
 - f. Following such transfer, the TOWN shall be released and held harmless from any cost, expense or other liability that may be incurred relating to such animal.
 - g. Upon the expiration of the redemption period, any unredeemed, seized, lost, strayed or homeless domestic canine animal shall be deemed transferred to, and shall become the property of, HVHS, which, thereafter, may release such unredeemed dog for adoption, place such dog, or otherwise act with respect to such dog as permitted by law.
 - h. Additional holding times: Additional holding times may be required if mandated by a Court of competent jurisdiction for any reason, including without limitation, pursuant to Article 26 of the Agriculture and Markets Law.
7. EMERGENCY VETERINARY CARE:
- a. If any dog that is under the care, custody and control of HVHS pursuant to this Agreement is determined by HVHS (after consultation with a licensed veterinarian and an authorized agent of the TOWN) to need "emergency" veterinary services, HVHS will arrange the necessary treatment of the dog by an appropriate veterinarian.
 - i. The TOWN will only be responsible for costs associated with the initial veterinarian examination and treatment if the owner cannot be identified.

- ii. The TOWN, in its sole discretion, shall have the responsibility for determining the treatment of the animal after consultation with the veterinarian; and TOWN agrees to be responsible for any agreed upon “emergency” expenses incurred not to exceed FIVE HUNDRED AND 00/100 (\$500.00) DOLLARS per dog, and only if the dog’s owner cannot be identified.
 - b. HVHS reserves the right to intervene and accept financial responsibility if, in their opinion, the deemed injury/ailment can be remedied.
- 8. PAYMENTS: The total TOWN payments provided for herein shall be paid to HVHS on a quarterly basis, *in arrears*, with the first payment due on March 31st for the quarter commencing January 1.
 - a. Payment shall be contingent upon HVHS’s submission, and the TOWN’s review and approval, of all required documentation to include the HVHS Animal Intake Forms, NYS Agriculture and Markets Law “DL-18” forms, and revenues received for that quarter. Provided, however, the TOWN, in its sole discretion, may earlier release to HVHS all, or a portion, of any quarterly payment, upon reasonable assurance that the required documents will be produced, in a timely fashion, and, upon HVHS’s compliance with all other terms of this Agreement.
 - b. Notwithstanding the aforesaid, the TOWN reserves the right to withhold quarterly payments to HVHS until such time as all documentation and revenues have been properly accounted for.
- 9. ANIMAL CONTROL OFFICER(S): The TOWN will employ such Animal Control Officer(s) as, in its sole discretion, it deems necessary for the proper implementation of the letter

and spirit of its obligations under Article 7 of the Agriculture and Markets Law, but the TOWN shall not be obligated to budget or spend any funds beyond those actually appropriated for the purpose of implementation Article 7.

10. ACCESS:

- a. The shelter shall be available to accept care, custody and control of domestic canines from the TOWN Animal Control Officer(s), TOWN Highway Department workers, TOWN Police Department Officers, and any other duly authorized agents of the TOWN at all times and during all hours of operation;
- b. TOWN agrees to provide a list of “other authorized agents” to HVHS on a monthly basis.
- c. HVHS agrees to provide a list of employee emergency contact numbers for the facility to the TOWN Animal Control Officer(s), TOWN Police Department, and other authorized agents as designated by the TOWN.
- d. The shelter shall be available for adoptions and surrenders to ORANGETOWN Residents, (with valid proof of residency), by appointment; However, during the COVID-19 pandemic, the residents access will be as dictated by HVHS necessary procedures and appointment requirements.

11. COMPLETION OF FORM DL18: The Animal Control Officer, members of the Police Department, authorized agents of the TOWN, and Town Residents, shall be required to complete a New York State Department of Agriculture and Markets, Division of Animal Industry Form “DL 18” entitled “Dog Seizure and Disposition Report”.

12. PLACEMENT OF ANIMALS AT THE SHELTER: During the term of this Agreement, HVHS agrees to use its best efforts to ensure that seized, lost, strayed or homeless domestic

companion canines are placed in a run at the Shelter, and that cages appropriate to the size of the animal shall only be utilized as a last resort, and in that event, not for more than TWENTY-FOUR (24) hours.

13. POLICIES AND PROCEDURES: During the term of this Agreement, HVHS agrees to abide by the policies and procedures set forth in the Dog Officer and Shelter Manual (hereinafter identified as the “Manual”) promulgated by the NYS Department of Agriculture & Markets, Division of Animal Industry, last revised March 2014. For example:

- a. HVHS shall maintain, at all times, adequate supplies for the performance of its obligations under this contract, including without limitation, the lawful duties under the “Manual”.
- b. A unique “Dog Control Record Number” shall be used for each dog entered on a report; this number shall be assigned by HVHS.
- c. HVHS shall maintain a copy of this Agreement available for viewing by duly authorized agents of the Department of Agriculture and Markets (DOAM).
- d. HVHS shall file and maintain a complete record of any seizure and subsequent disposition of any dog in the manner proscribed by the Commissioner of the New York State Department of Agriculture and Markets.

14. BUDGET AND ANTICIPATED EXPENSES: On or before September 1st in each year, HVHS shall submit, to the TOWN Supervisor:

- a. A copy of the latest Financial Audit Statement;
- b. A copy of the latest Form 990 filed with the Internal Revenue Service;
- c. A breakdown of cost per animal impounded pursuant to this Agreement, including, but not limited to: emergency, medical, veterinary, spay and neuter services; as well as

information concerning the number of animals seized, redeemed, adopted, surrendered and/or transferred; the number of animals euthanized, etc.; and

- d. Written proof of its 501(c)(3) status as a not-for-profit corporation.

15. RECEIPTS, CASH DEPOSITS AND DISBURSEMENTS AND CONTROLS: HVHS shall install and maintain an adequate automated system of internal controls covering income and expenses, and payments received, to ensure that all of the TOWN's fees are paid to them as set forth herein and in a timely fashion.

16. DANGEROUS DOG: There may be times when directed by court order where HVHS may be required to board a dog classified as a "dangerous dog" (as defined in Section 108, paragraph 24(a) of the Agriculture and Markets law). Under such circumstances, the dog shall be harbored in a manner to:

- a. Prevent escape of the dog;
- b. Protect the public from unauthorized contact with the dog;
- c. Protect the dog from the elements pursuant to Section 353(b) of the Agriculture and Markets Law. Such confinement shall not include lengthy periods of tying or chaining;
- d. The restraint of the dog on a leash by an adult at least TWENTY-ONE (21) years of age whenever the dog is not confined;
- e. The dog is to be exercised only by trained staff personnel, Board members or HLE agents and *NOT* volunteers;
- f. When necessary, in the judgment of HVHS, muzzling the dog in a manner that will prevent it from biting any person or animal but that shall not injure the dog or interfere with his vision or respiration but in any event, only if possible to do so without injuring the person attempting to muzzle the dog,

- g. Continue to maintain a liability policy in force and effect to indemnify both the TOWN, the Shelter and HVHS for personal injury or death resulting from an attack by such dangerous dog; and
- h. Comply with all orders of a court competent jurisdiction relative to said animal.

17. INSURANCE: HVHS shall be required to procure and maintain at their own expense the following coverage:

- a. General Liability Insurance: A policy or policies of comprehensive General Liability Insurance with limits of not less than TWO MILLION (\$2,000,000.00) DOLLARS, per occurrence and TWO MILLION (\$2,000,000.00) DOLLARS aggregate.
- b. Professional Malpractice Insurance: A policy or policies of professional liability insurance with limits of not less than ONE MILLION (\$1,000,000.00) DOLLARS.
- c. Each policy of insurance required shall be in the form and content satisfactory to the TOWN Attorney's Office and shall provide that:
 - i. The TOWN OF ORANGETOWN is named additional insured on a primary and non-contributing basis;
 - ii. The insurance policies shall not be changed or cancelled until the expiration of THIRTY (30) DAYS after written notice to the TOWN; and
 - iii. The insurance policies shall be automatically renewed upon expiration and continued in force unless the TOWN is given SIXTY (60) DAYS written notice to the contrary.
 - iv. Such Insurance Policies shall be placed with a carrier that is rated at least A(-) under AM Best for Liability Insurance.

- v. No work shall be commenced under the contract unless and until proof of insurance required by this contract is submitted to TOWN.
- vi. Upon failure to furnish, deliver and maintain such insurance as described above, this Contract may, at the election of the TOWN, be declared suspended, discontinued or terminated. Failure to procure and maintain any required insurance shall not relieve HVHS from any liability under this contract, nor shall the insurance requirements be constructed to conflict with the obligations of HVHS concerning indemnification.

18. WORKERS COMPENSATION INSURANCE: HVHS will comply with the New York State Workers' Compensation Insurance requirements and provide the TOWN with a duly executed Form U-26.3 (NYSIF) (Certificate of Workers' Compensation Insurance) to establish compliance.

19. INDEMNIFICATION / HOLD HARMLESS: HVHS agrees to protect, defend, indemnify and hold the TOWN and its officers, employees, and agents and save it harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind and character in connection with or arising directly or indirectly out of the performance of HVHS pursuant to its' obligations under this agreement and/or the performance thereof. Without limiting the generality of the foregoing, any and all claims, etc., relating to personal injury, death, damage to property, or any other violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any Court, shall be included in the indemnity hereunder with the exception

of claims, if any, caused by the sole negligence of the TOWN, its' authorized agents and employees.

20. MODIFICATION, AMENDMENT OR TERMINATION: This agreement may only be modified amended or terminated by an instrument in writing, duly executed and acknowledged by the authorized representative of each party, after approval by the governing body of each party.

21. NON-WAIVER: The failure of the TOWN or HVHS to exercise any right, power or option arising under this Agreement, or to insist upon strict compliance with the terms of this Agreement, and shall not constitute a waiver of the terms and conditions of this agreement with respect to any other or subsequent breach thereof, nor a waiver by TOWN or HVHS of their rights at any time thereafter to require the exact and strict compliance with all the terms hereof.

22. NOTIFICATION: All notices or demands provided for in this Agreement shall be deemed to have been given, made or sent when made in writing and deposited in United States mail by Certified Mail, Return Receipt Requested with postage paid thereon and addressed as follows:

a. Hudson Valley Humane Society
Attn: Ann Marie Gaudio, President
200 Quaker Road
Pomona, New York 10970

b. Town of Orangetown
Attn: Town Supervisor
26 Orangeburg Road
Orangeburg, New York 10962

23. SEVERABILITY: If any provision of this Agreement is deemed to be invalid or inoperative for any reason, that part shall be deemed modified to the extent necessary to make it valid, operative and lawful, pursuant to the laws of the State of New York, or if it cannot be so modified, then severed and the remainder of the Agreement shall continue in full force and effect

as if the Agreement had been signed or filed with the designated filing agent with the invalid portion so modified or eliminated.

24. PARAGRAPH HEADINGS: The paragraph headings used herein are for convenience only.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the ____ day of _____, 2022.

HUDSON VALLEY HUMANE SOCIETY
FOR THE PREVENTION OF CRUELTY
TO ANIMALS

By: _____
AnnMarie Gaudio, President

Seal:

TOWN OF ORANGETOWN

By: _____
Teresa M. Kenny, Supervisor

Seal:

CONTRACT ADDENDUM NO. 2021067-01

(2022 GRANT SERVICES)

DATED: December 6, 2021

TO
Agreement for Professional Services
(Original Agreement No. 2021067-00 Dated: May 20, 2021)

The original Agreement, between Town of Orangetown, Rockland County, New York, the CLIENT and Laberge Engineering & Consulting Group, LTD., is hereby amended as follows:

The contract amount shall be increased by \$36,000 plus reimbursable expenses for provision of additional services related to Professional Grant Writing Services for calendar year 2022.

SUBCONSULTANT:

TOWN OF ORANGETOWN

26 West Orangeburg Road

<u>Orangeburg</u>	<u>New York</u>	<u>10962</u>
City	State	Zip

BY: _____
Name Title

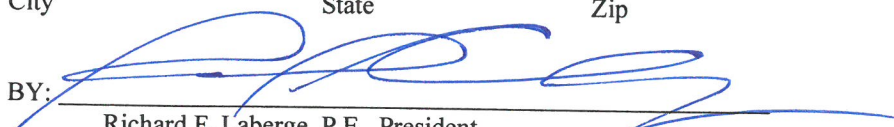
Print Name: Teresa Kenny Title: Supervisor

CONSULTANT:

LABERGE ENGINEERING & CONSULTING GROUP, LTD.

4 Computer Drive, West

<u>Albany</u>	<u>New York</u>	<u>12205</u>
City	State	Zip

BY: 
Richard F. Laberge, P.E., President

Orangetown Grant Services 2021

**PROFESSIONAL SERVICE REQUISITION TRACKING
LABERGE GROUP PROJECT NO. 2021067**

PSR#/LABERGE PHASE	Grant #	BUDGET	LABERGE	LABERGE	LABERGE	LABERGE	LABERGE	Total Billed	Remaining Budget
			INV #1	INV #2	INV #3	INV#4	INV#5		
		\$ 21,000.00						\$ -	\$ 21,000.00
Phase 2200 - General		\$ 7,000.00	\$ 5,250.00	\$ (5,250.00)	\$ 232.63	\$ 465.26		\$ 697.89	\$ 20,302.11
Phase 2201 - NYS SMART GROWTH/CLIMATE SMART GRANT	1	\$ 7,000.00	\$ 7,000.00					\$ 7,000.00	\$ 13,302.11
Phase 2225-Funding /Needs Assessment	2	\$ 7,000.00	\$ -	\$ 5,250.00	\$ 1,750.00			\$ 7,000.00	\$ 6,302.11
Phase 2202 - CREG Grant	3	\$ 2,000.00					\$ 2,000.00	\$ 2,000.00	\$ 4,302.11
	4	\$ -						\$ -	\$ 4,302.11
	5	\$ -						\$ -	\$ 4,302.11
	6	\$ -						\$ -	\$ 4,302.11
Phase	7	\$ -						\$ -	\$ 4,302.11
Expenses			\$ 17.69		\$ 30.87			\$ 48.56	\$ 4,253.55
									\$ 4,253.55
TOTALS		\$ 23,000.00	\$ 12,267.69	\$ -	\$ 2,013.50	\$ 465.26	\$ 2,000.00	\$ 16,746.45	

STANDARD AGREEMENT for PROFESSIONAL SERVICES
(2021067-00)

This is an Agreement made as of May 20, 2021 between Town of Orangetown of 26 Orangeburg Road, Orangeburg, New York 10962, (Hereinafter called the CLIENT), and LABERGE ENGINEERING & CONSULTING GROUP, LTD., 4 Computer Drive West, Albany, NY 12205, which is a Corporation registered in the State of New York (hereinafter called LG).

A. CLIENT and LG, for the mutual consideration hereinafter set forth, agree as follows:

Professional Grant Writing Services per methodology in the proposal excerpt (Attachment A).

B. CLIENT agrees to pay LG as compensation for services as follows:

\$21,000.00

~~\$24,000~~ plus reimbursable expenses for remainder of 2021

~~\$26,000 plus reimbursable expenses for remainder of 2022~~

TB nos 2021-180

Any authorized engineering services to assist with grant preparation will be billed on an hourly basis plus reimbursable expenses in accordance with the schedule in Attachment B.

C. CLIENT agrees to pay LG a retainer with this Agreement of \$ Ø.

CLIENT, shall reimburse LG for the actual cost of all travel-related expenses (including, but not limited to meals, lodging, and transportation) for project related work performed away from LG's offices. CLIENT shall reimburse LG for other project related expenses, including, but not limited to, reproduction costs, delivery, field related costs, all at charged rates. Other expenses include, but are not limited to, outside consultants, materials testing, application and permit fees. All expenses shall be invoiced at cost plus a 20% service fee for handling and administration.

Fees and other charges will be invoiced monthly. The amount of each invoice shall be due at the time of billing. When bills are not paid within 30 days, a late payment service charge will be charged on any unpaid balance at the rate of 1.5% compounded monthly (annual rate of 18%) or the highest rate allowable under applicable State Law, whichever is higher.

D. CLIENT shall furnish the following:

Information in client's possession relevant to completing the services requested.

E. This Agreement includes the Standard Terms and Conditions shown on pages 2 & 3 of this document and are incorporated herein by this reference.

F. The person signing this Agreement warrants he/she has authority to sign as, or on behalf of, the CLIENT. If such person does not have such authority, it is agreed that he/she will be personally liable for all breaches of this Agreement, and that in any action against them for breach of such warranty, a reasonable attorney's fee shall be included in any judgment rendered.

AGREED TO:

Town of Orangetown
(Client's Name)

BY: Teresa Kenny, Esq.

[Signature]
(Authorized Signature/Date)

TITLE: Town Supervisor

AGREED TO:

LABERGE ENGINEERING & CONSULTING GROUP, LTD.

BY: Richard F. Laberge, P.E.

[Signature]
(Authorized Signature/Date)

TITLE: President

STANDARD TERMS & CONDITIONS OF AGREEMENT

1. **EXTRA WORK:** Extra work shall include, but not be limited to, additional office or field work caused by policy or procedural changes of governmental agencies, changes in the project, and work necessitated by any of the causes described in Paragraph 5 hereof.

2. **OWNERSHIP OF DOCUMENTS:** All tracings, specifications, computations, survey notes and other original documents as instruments of service are and shall remain the property of LG unless otherwise provided by law. CLIENT shall not use such items on other projects without LG's prior written consent. LG shall not release CLIENT'S data without authorization.

3. **LIMITATIONS OF COST ESTIMATES:** Any estimate of the cost of the project services or any part thereof is not to be construed, nor is it intended, as a guarantee of the total cost.

4. **APPROVAL OF WORK:** The work performed by LG shall be deemed approved and accepted by CLIENT as and when invoiced unless CLIENT objects within 15 days of the invoice date by written notice specifically stating the details in which CLIENT believes such work is incomplete or defective.

5. **DELAY:** Any delay, default or termination in or of the performance of any obligations of LG under this Agreement caused directly or indirectly by strikes, accidents, acts of God, shortage or unavailability of labor, materials, power or transportation through normal commercial channels, failure of CLIENT or CLIENT'S agents to furnish information or to approve or disapprove LG's work promptly; late, slow or faulty performance by CLIENT, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of LG's work, or any other acts of the CLIENT or any other Federal, State or local government agency, or any other cause beyond LG's reasonable control, shall not be deemed a breach of this Agreement. The occurrence of any such event shall suspend the obligations of LG as long as performance is delayed or prevented thereby, and the fees due hereunder shall be equitably adjusted.

6. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, LG shall be paid for all services rendered to the date of termination as well as for all reimbursable expenses and termination expenses. For purposes of this section, the failure of the CLIENT to pay LG within thirty (30) days of receipt of an invoice shall be considered such a substantial failure. In the event of a substantial failure on the part of the CLIENT, LG, in addition to the right to terminate set forth in the paragraph, may also elect to suspend work until the default in question has been cured. No delay or omission on the part of LG in exercising any right or remedy hereunder shall constitute a waiver of any such right or remedy on any future occasion.

7. **INDEMNIFICATION:** CLIENT shall indemnify, defend and hold LG harmless for any and all loss, cost, expense, claim, damage, or liability of any nature arising from: (a) soil conditions; (b) changes in plans or specifications made by CLIENT or others; (c) use by CLIENT or others of plans, surveys, or drawings unsigned by LG or for any purpose other than the specific purpose for which they were designed; (d) job site conditions and performance of work on the project by others; (e) inaccuracy of data or information supplied by CLIENT; and (f) work performed on material or data supplied by others, unless said loss was solely caused by LG's own negligence.

8. **LITIGATION:** Should litigation be necessary to collect any portion of the amounts payable hereunder, then all costs and expenses of litigation and collection, including without limitation, fees, court costs, and attorney's fees (including such costs and fees on appeal), shall be the obligation of the CLIENT.

9. **REPLACEMENT OF SURVEY STAKES:** LG, if included in Paragraph A of the Agreement, will provide necessary construction stakes. In instances where it is determined that negligence on the part of the CLIENT or others results in the need for restaking, the cost of such restaking will be billed as an extra to the CLIENT on a time and material basis. It will be the CLIENT'S responsibility to provide adequate protection of the stakes against their own negligence or the negligence of those working for or with them and against vandalism by others. If staking is ordered by the CLIENT or others prematurely and construction does not take place, it will also be the CLIENT'S responsibility to protect said stakes until such time as construction takes place.

10. **OBSERVATION AND TESTING OF CONSTRUCTION, SAFETY:** The observation and testing of construction is not included herein unless specifically agreed upon in the Scope of Services as set forth in Paragraph A of this Agreement. It should be understood that the presence of LG's field representative will be for the purpose of providing observation and field testing. Under no circumstances is it LG's intent to directly control or supervise the physical activities of the contractor's workmen to accomplish the work on this project. The presence of LG's field representative at the site is to provide the CLIENT with a continuing source of information based upon the field representative's observations of the contractor's work, but does not include any superintending, supervision, or direction of the actual work of the contractor or the contractor's workmen. The contractor should be informed that neither the presence of LG's field representative nor observation and testing personnel shall excuse the contractor in any way for defects discovered in their work. It is understood that LG will not be responsible for job or site safety on the project.

11. **RESTRICTIONS ON USE OF REPORTS:** It should be understood that any reports rendered under this Agreement will be prepared in accordance with the agreed Scope of Services and pertain only to the subject project and are prepared for the exclusive use of the CLIENT. Use of the reports and data contained therein for other purposes is at the CLIENT'S sole risk and responsibility.

12. **LIMITATIONS OF CONSULTANT'S LIABILITY:** The CLIENT agrees to limit LG's liability to the CLIENT and to all Construction Contractors and Subcontractors on the Project, due to LG's professional negligent acts, errors or omissions, such that the total aggregate liability of LG to those named shall not exceed five thousand dollars (\$5,000) or 50% of LG's total fee for services rendered on this Project, whichever is the greater.

13. **CONTROLLING LAWS:** This Agreement is to be governed by the Laws of the State of New York.

14. **INSURANCE:** LG shall procure and maintain throughout the period of this Agreement, at LG's own cost, insurance for protection from claims under worker's compensation, temporary disability and other similar insurance required by applicable State and Federal Laws. Certificates for all such policies of insurance shall be provided to the CLIENT upon written request. LG shall not be responsible for any loss, damage or liability beyond the amounts, limits and conditions of such insurance.

15. **SUCCESSORS AND ASSIGNS:** Neither CLIENT nor LG shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law.

16. **ARBITRATION:** All claims, counterclaims, disputes and other matters in question between the parts hereto arising out of or relating to this Agreement or breach thereof may, at the option of LG be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Any such arbitration shall take place in the Town of Colonie, Albany County, New York.

17. **NOTICES:** All notices called for by this Contract shall be in writing and shall be deemed to have been sufficiently given or served when presented personally and when deposited in the mail, postage prepaid, certified and return receipt requested, addressed as stated in the Agreement.

18. **RIGHT OF ENTRY:** The CLIENT will provide right of entry for our staff, subcontractors and all necessary equipment in order to complete the work. LG will take all reasonable precautions to minimize damage to the property. It is understood by CLIENT that in the normal course of work some damage may occur, the correction of which is not part of this Agreement.

19. **UTILITIES:** In the prosecution of our work, LG will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. CLIENT agrees to hold LG harmless for any damages to subterranean structures and utilities.

20. **STANDARD OF CARE:** Services performed by LG under this Agreement will be conducted in a manner with the level of care and skill ordinarily exercised by members of the professions currently practicing under similar conditions. No other warranty, express or implied is made.

21. **RENOVATION/REHABILITATION OF EXISTING BUILDINGS:** Where the work involves remodeling and/or rehabilitation of an existing building, CLIENT agrees that certain assumptions must be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money, or destroying otherwise adequate or serviceable portions of the structure, CLIENT agrees that, except for negligence on the part of LG, CLIENT will hold harmless, indemnify and defend LG from and against any and all claims arising out of the professional services provided under this Agreement.

22. **EMPLOYEE RETENTION:** Client agrees not to hire or solicit for employment, for themselves or others, LG employee during the term of this agreement and for a period of two years thereafter.

23. **ASBESTOS AND HAZARDOUS WASTE:** Where the work involves asbestos and/or hazardous wastes, CLIENT agrees that the handling or removal of asbestos, asbestos products and hazardous wastes involves certain health risks which require specific safety measures. LG will not be responsible for safety and safety measures on the job, including measures for the protection of employees, contractors, subcontractors and/or the general public. Such responsibility for safety and safety measures is and shall remain that of the contractor. CLIENT agrees that, except for claims and damages arising from negligent acts, errors or omissions of LG, CLIENT will hold harmless, defend and indemnify LG from all claims, suits, expenses or damages arising from or alleged to arise from exposure to or inhalation of asbestos, asbestos fibers or hazardous wastes.

Nothing in this Agreement shall impose liability on LG for claims, lawsuits, expenses of damages arising from, or in any manner related to, the exposure to or the handling, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the Environmental Protection Agency.

24. **SEISMIC DESIGN:** If the project is located in New York State, it will be designed in accordance with the structural requirements of the New York State Uniform Fire Prevention & Building Code, which does not specify any requirements for seismic design.

The structure will have some seismic resistance, however, seismic design will not be incorporated in the structural design of the project unless specifically requested by CLIENT as an additional service.

25. **CONSTRUCTION PHASE SERVICES:** Where LG's services do not include review or site observation of the contractor's work and performance, CLIENT agrees to defend, indemnify and hold harmless LG from any claim or suit whatsoever, including, but not limited to all payments, expenses or costs involved, arising from or alleged to have arisen from the contractor's performance or the failure of the contractor's work to conform to the design intent and the contract documents. LG agrees to be responsible for its own sole negligent acts, errors or omissions.

ATTACHMENT A

PROPOSED METHODS

Laberge Group employs a team of professional planners, community and economic development specialists and experienced grant writers to assist communities in identifying funding needs and securing resources to implement important municipal projects. Each member is empowered by their expansive breadth of knowledge, diversified experience, and pride of excellence.

Laberge Group has assisted numerous county governments, large and small municipalities, public and private businesses, and non-profit organizations in the identification and procurement of the grant programs as requested by the Town of Orangetown, which includes, but is not limited to, the following subject areas:

- a) Infrastructure Development and Maintenance
- b) Community/Economic Development
- c) Parks, Recreation, and the Arts
- d) Criminal Justice Technology and Programs
- e) Health Services
- f) Housing and Housing Programs
- g) Homeland Security
- h) Technology
- i) Social Services and Human Resources
- j) Transportation/Highway
- k) Workforce Development
- l) Records Management

Laberge Group's extensive experience working with municipal governments has provided us with an introspective understanding of the many needs and concerns that impact each of our clients. In response, and with a commitment to uphold our philosophy to provide the highest quality service for each client's requirement, Laberge Group has designed a grants' strategy, surveillance, and development process that has proven successful in securing over \$245 million in state and federal funding for our clients.

The successful best practices methodology used to achieve our success is summarized below:

Methodology for Successful Grant Preparation

1. Identify the community's needs and issues.
2. Analyze potential issue-solving projects from a variety of perspectives.
3. Examine all alternative solutions.
4. Identify available funding and/or support resources.
5. Recommend source or identity of resolution and solution(s).
6. Develop a schedule or timeline for grant activities.
7. Enact appropriate activity to successfully achieve objectives.

ON SITE LIASON:

Mr. Scott Siegel, Community Developer Manager, in response to the Town of Orangetown's award of contract, will provide on-site consultation with the Supervisor and assigned Town Staff to identify program/project needs and assess projects for grant applications. A Laberge Group team of experienced planning and grants development professionals will work closely with Mr. Siegel in the coordination of each funding task.

TASK 1: FUNDING NEEDS ANALYSIS

Outcomes of a Funding Needs Analysis will result in the development of Town directed grant strategies, the surveillance of available funding resources, and the development of professionally prepared and competitive funding applications.

Activity 1: Plan Review:

It is important to note that a strong foundation for grant preparation exists when the Town has established goals represented in a publicly approved planning document. As such, the Funding Needs Analysis will begin with Laberge

Group conducting a review of the Town's publicly-approved and municipally-adopted planning documents that set out short and long-term goals for the Town. This review will be expanded as necessary to include County or Regional draft or adopted planning documents that set forth planning initiatives for revitalization, growth and/or redevelopment.

Activity 2: Department Needs Review:

As directed by the Town, Laberge Group will meet with department heads to discuss and assess current funding priority areas of each department. Discussions will include but are not limited to department needs for specific projects, program stabilization, expansion, or future direction. Laberge Group will review departmental and Town-wide priorities and provide an analysis of project needs as it relates to annual funding priorities. From this information, we will collectively identify potential priority areas requiring grant funding. The findings of the department interviews will provide the foundation for the development of the Town of Orangetown's Funding Needs Analysis and Grant Matrix.

Activity 3: Funding Needs Analysis and Grant Matrix:

This customized document prioritizes each project needing to be funded, and cross-references the project to potential funding sources.

TASK 2: GRANT FUNDING RESEARCH

Laberge Group will monitor the critical grant environments for funding resources which can financially assist in any one of the activities specified on the Funding Needs Analysis and Action Matrix while also maintaining the overall strategic direction of the Town.

As a result of the activities listed below, Laberge Group will provide the Town of Orangetown with summaries of potential funding opportunities. The summaries will include, but are not limited to, the name of the agency, the advertised due dates for the application(s), eligibility, a brief program summary, the level of funding available, and any local share requirements.

As such, our Grant Funding Research - surveillance program will incorporate the following strategies:

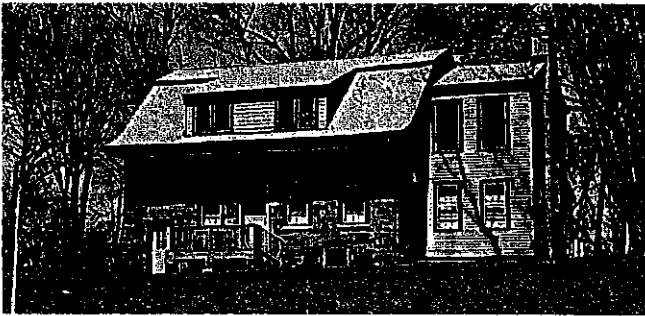
a) Laberge Group grant development personnel will employ ongoing surveillance of a variety of potential funding opportunities. We have an extensive history of working with a plethora of Federal and State programs, including, but not limited to, those agencies that support Community/Economic Development; Criminal Justice Technology and Programs; Health Services; Housing and Housing Programs; Infrastructure; Planning; Homeland Security; Other Technology; Parks and Recreation; Social Services; Transportation; and Workforce Development. While the majority of New York State community development grants are included in the annual Consolidated Funding Application, many local, county, and federal opportunities still exist and need to be monitored year round

b) Laberge Group maintains a list of Federal and State agencies and foundation programs that are known to have provided funding opportunities in the past. The more popular of these funding resources, (i.e. in no special order - FEMA, USDA, COPS, OPRHP, DOT, NYSERDA, DHS, ESDC, EFC, NYSOA, DOH, DCJS, EPA, FTA, etc.) are regularly revised in order to identify updates to funding announcements. Upon notice of a funding announcement, we have found that discussing proposed projects with representatives from the funding source, enhances the competitiveness of a submitted application.

c) The Albany location of Laberge Group's main office makes visits to the Capitol and legislative offices most convenient. Laberge Group personnel are readily available to meet with legislators and agency staff members to discuss priority projects that can be achieved in a cost effective manner through the leveraging of funds from a myriad of sources.

d) Laberge Group grant development personnel will schedule meetings with the Supervisor, Budget Director and Department Heads to discuss current events and any new or updated changes to the Funding Needs Analysis

and Action Matrix. When a certain grant opportunity becomes known to the Town, upon their request, we will research the NOFA and provide the name of the agency, the advertised due dates for the application, funding eligibility, a brief program summary, the level of funding available, and any local share requirements.



TASK 3: ON CALL GRANT RESEARCH

For the duration of a Contract between the Town of Orangetown and Laberge Group, should the Town become aware of, and interested in, a funding opportunity that does not register with the Funding Needs Analysis and Action Matrix, the Town may request Laberge Group's grant development personnel to research the opportunity and provide an overview which includes the name of the agency, the advertised due dates for the application, funding eligibility, a brief program summary, the level of funding available, and any local share requirements.

It should be noted that On-Call Grant Research requests should allow sufficient lead time for appropriate research of the funding program and, in the event the Town should chose to move forward in applying for the funding, should allow for a sufficient amount of time for the development of a professionally prepared, competitive application.

TASK 4: GRANT PROPOSAL DEVELOPMENT

After receiving direction from the Town of Orangetown, Laberge Group will proceed with the following summarized steps:

Authorization To Proceed (ATP): An ATP is a short form document that, when executed by the Town of Orange-

town and Laberge Group, authorizes Laberge Group to prepare and submit a specific grant application on behalf of the Town. The ATP sets forth the general steps to be completed by the grant writer and the associated application preparation fee.

Assignment: Application preparation will be assigned to the grant writer who has the greatest knowledge of the selected subject matter and who may have completed prior successful applications to the funding source. Laberge Group grant development personnel are well experienced in both hard copy and electronic application submittals. Applications completed by Laberge Group grants development personnel are prepared in a professional and competitive manner, strongly linking the intent of the funding source to the proposed project.

Prior Evaluations: Before commencing with the application preparation, the assigned grant development personnel will obtain and review any the Town of Orangetown's prior application evaluations prepared by the funding source to which the current application will be submitted. This preliminary step allows us to gain a better understanding of the specific review process and more clearly defines the information the particular funding sources deem to be the most important.

Review of Town, County and/or Regional Plan Goals: As stated earlier, the Town of Orangetown's publicly adopted planning goals will form a strong foundation for a funding request. A review of the Funding Needs Analysis and Grant Matrix will provide the name of the planning document and the detailed goal that the Town wishes to implement. Further review of the planning document will provide the background knowledge tied to the goals development. This information can often be used in the application narratives.

Research: The development of a successful grant proposal begins with researching material to gain a full understanding of the funding program and how it will tie to the Town of Orangetown's needs. Current data relating to the subject matter must be obtained and corroborated with

the appropriate department(s). It is important to note that many grant NOFA's may require specific policies or programs to be submitted; i.e. the former NYSEERDA's Cleaner Greener Program. Individual departments will have the responsibility of providing those programs to Laberge Group prior to grant development.

Start-Up Package: A start up package prepared by Laberge Group grants development is comprised of an assortment of grant support items that will add to the competitiveness of the grant application. The package normally consists of the following items:

- Draft resolution to apply.
- Application cover letter.
- Letter requesting agency and/or elected official expressions of support.
- Sample support letter(s).
- Project commitment letter.
- Local share commitment.
- Public hearing announcements and draft public notices will be provided should these activities be a requirement of the funding source.

The start up package will also include the instructions explaining the appropriate action required for each item.

Grant Application Forms: Grant application forms are provided by the funding source and are required to be completed, signed by the Supervisor and become the start of the application. Many applications now require certain certifications and lobbying disclosures to be signed as well.

Grant Application Narratives: Grant application narratives are generally prepared in response to questions asked in the application guidance or instructions. Narratives are of paramount importance in preparing an application and should be tied to the ranking materials or priorities provided within the instructions or grant guidance.

Exhibits: Most applications require a num-

ber of exhibits which might include items such as census maps, project location maps, plan excerpts, and other supporting documentation.

Quality Reviews: The process to complete a final application includes a 4-step quality review. Upon completion of the narrative portion of the application:

- 1) A draft copy will be sent to the Supervisor, and department head, for review and comment. Any changes will be made at this point.
- 2) A peer review of the full grant document is conducted as the office,
- 3) Followed by a supervisory review prior to the application being sent on for copying.
- 4) Once the grant application is completely assembled, a final Quality Review is scheduled with Mr. Scott Siegel prior to each grant application, with the appropriate numbers of the document submitted to the funding source with a copy forwarded to the Town of Orangetown.

TASK 5: MONTHLY REPORTS

Laberge Group will submit monthly reports to the Town summarizing the amount of time expended and describe the activities undertaken during the previous month.

TASK 6: OPTIONAL SERVICE: GRANT ADMINISTRATION & PROGRAM DELIVERY

At the Town of Orangetown's request, Laberge Group has the expertise to provide full grant administration and program delivery services.

a) **Program Manager:** Upon request of the Town of Orangetown, Laberge Group will assign a program manager to assist the Town in administering and delivering the program in full conformance with all Federal, State and Local guidelines. Laberge Group's program manager will be responsible for advising the Town contact on the set up of the necessary filing system and establishment of financial accounts to receive grant funds.

b) **Program Administration:** Most grant applications require the applicant to provide a work plan and activity

schedule within the application document. This information often becomes a component of the award contract. Laberge Group will assist staff in maintaining grant eligibility through adherence to the work plan and project schedule and, as such, will provide the necessary program management, appropriate record keeping, accessing of funds and the filing of timely progress reports. At the Town's direction, grant-related reports will be prepared at Laberge Group offices and provided to the Supervisor for signature and submittal to the funding agency. A Laberge Group representative will meet with staff to review grant files to ensure the record keeping, reporting, and management meets both the Town's management procedures and the criteria established by the funding source. Please note that grant administrative fees are included in most grant applications and can be authorized separately as an addendum to this contract.



c) Program Delivery Activities: Laberge Group will assist the Town in all areas of program delivery. The delivery of the awarded project will vary depending on the type program. Generally, delivery activities and costs are those that can be directly attributed to activities set forth in the application's proposed project and activities to deliver the project in conformance with Federal, State, and local guidelines. Laberge Group is well experienced in all venues of program delivery. Please note that program delivery fees are included in most program delivery applications and can be authorized separately as an addendum to this contract.

d) Technical Expertise: Laberge Group is a full service, multiple discipline engineering and community development organization. Our highly skilled staff consists of a battery of engineers, architects, grant development personnel, and program management professionals that are available to assist the Town in fulfilling all aspects of grant implementation.

ATTACHMENT B

FEE PROPOSAL

Based upon our unstanding of the Town of Orangetown's grant services needs, Laberge Group is pleased to offer grant identification and writing services at a prorated fee of \$3,000/month until December 31, 2021 plus reimbursable expenses.

For budgetary purposes, the grant needs assessment is estimated at approximately 60 hours. Once a grant has been selected, an authorization to proceed will be prepared per grant, with an individual not to exceed amount per grant. Typical grant development fees range from \$2,500 - \$8,500 depending on the complexity of the grant and individual project readiness. Grant identification and initial research will be billed at our normal hourly rates and is included with the annual contract. For 2022, our annual fee for services will be \$36,000, plus normal reimbursable expenses. Engineering services will be billed at separate hourly rates.

HOURLY RATE SCHEDULE GENERAL SERVICES EFFECTIVE: January 2021

TECHNICAL CATEGORY

Officer, Principal, Architect, Engineer, Planner, Surveyor, CPA	175 – 250
Engineering-Project Managers	140 – 240
Architecture-Project Managers	135 – 200
Surveying-Project Managers	135 – 175
Planning-Project Managers	135 – 200
Engineers	100 – 170
Architects	100 – 145
Landscape Architects	95 – 130
Interior Designers	90 – 120
Planners/Community Developers	90 – 135
Surveyors - Party Chief/Instrument Person	65 – 100
Surveyors (NYS Prevailing Rate Work)	100 – 140
Engineering Technicians	90 – 140
Architectural Technicians	90 – 135
Surveying Technicians	90 – 135
Planning/Community Development Technicians	90 – 130
Interior Design Technicians	90 – 125
Resident Managers	95 – 150
Project Representatives	75 – 140
Financial/Fiscal/Administration/Accounting	60 – 235
Project Coordinator	80 – 110
Administrative Assistants	60 – 125

NOTES:

1. Rates based on range of Direct Personnel Expense (DPE) plus 1.7 DPE.
2. All rates subject to change without notice due to salary increases, State or Federal requirements or new personnel.
3. Reimbursable Expenses (other than Labor) shall be compensated at the actual cost thereof, plus an additional \$0.20 per dollar incurred.

**COVENANT, HOLD HARMLESS AND
INDEMNIFICATION AGREEMENT**

THIS COVENANT, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT (“Agreement”) made as of this 7 day of JANUARY, 2022 between **ROBERT SLINGSBY and EILEEN SLINGSBY** residing at 9 Valenza Lane, Blauvelt, NY, hereinafter “Owner”, to the **TOWN OF ORANGETOWN**, a Municipal Corporation, having an address at Town Hall, 26 Orangeburg Road, Orangeburg, New York 10962, hereinafter “Town”.

RECITALS:

WHEREAS, the Owner represents and warrants that it is the owner in fee simple of premises known as and by street address number: 9 Valenza Lane, in the Hamlet of Blauvelt, Town of Orangetown, County of Rockland, and being designated on the Orangetown Tax Map as Section 70.11, Block 1, Lot 7 (the “premises”), and the Town has a right-of-way/easement on which the Owner has constructed four (4) brick and mortar structures (hereinafter referred to as the “construction”) in said right-of-way/easement; and

WHEREAS, the Owner had erected the construction on Town property without seeking approval, a permit, or consent from any Town Department, agency or Board; and

WHEREAS, the Owner wishes said construction to continue to remain within the Town’s right-of-way/easement as it presently does so as to continue the present beneficial nature of same, from both an economic and aesthetic standpoint to the Owner; and

WHEREAS, the Town is agreeable to granting the Owner a revocable license in order to maintain, and continue to maintain, said construction within the right-of-way/easement, on the express condition that an agreement, running with the land, is made, in recordable form, which provides, *inter alia*, that: (1) the Owner will, upon receipt of written notice (“Notice”) from the Town, remove or cause to be removed, the said construction within a reasonable period of time

thereafter, but, in no event later than thirty (30) days following the date of the Notice; (2) the Town will not, as a result of, or in connection with, or related to, incur any liability in or any responsibility for the removal, upkeep, repair, replacement, restoration and/or maintenance of the said construction; (3) the Owner will not assert against the Town any relinquishment or abandonment, or claims thereof, or other estate, interest and/or rights held by the Town in or to the right-of-way/easement, or any part thereof; (4) the Owner agrees, at its sole cost and expense, to indemnify and hold harmless and defend the Town from and against any and all liability or responsibility, resulting from, or in connection with, or related to, the removal, upkeep, repair, replacement, restoration and/or maintenance of the said construction, or claims thereof; and (5) the Owner agrees, at its sole cost and expense, to indemnify and hold harmless and defend the Town from and against any and all liability or responsibility for any personal injury and/or property damage claims involving said construction.

WITNESSETH:

NOW, THEREFORE, in consideration of One Dollar (\$1.00) paid by the Owner to the Town, the receipt of which is hereby acknowledged, the foregoing Recitals (the "Recitals") and or other good and valuable consideration, the parties hereto, intending to be legally bound, hereby agree as follows:

FIRST: All of the Recitals are, by this reference thereto, incorporated herein with the same force and effect as if repeated herein in their entirety.

SECOND: Subject to the terms and conditions herein set forth, the Town hereby creates and grants to the Owner a revocable license over and across the right-of-way for the purposes of maintaining and continuing to maintain, in its present location, the Owner's existing construction, to wit: four (4) brick and mortar structures, and which the Owner acknowledges and agrees does encroach upon the Town's right-of-way/easement.

THIRD: The Owner hereby understands and expressly agrees that the license created or granted it hereby by the Town is revocable and can be revoked at any time, with or

without cause, by the Town, upon giving Notice to the Owner, at the address first above written. In the event that the Town gives Notice to the Owner that it elects to revoke this license and requires that the said construction be removed, then the Owner will remove or cause to be removed said construction from the right-of-way/easement, at the sole cost and expense of the Owner (i) within the period of time given or prescribed in the Notice, or (ii) if no period of time is given or prescribed in the Notice, then within a reasonable period of time following the Owner's receipt of the Notice, but, in any event, within thirty (30) days as measured from the date of the Notice.

FOURTH: The Owner acknowledges, understands and agrees that the revocable license herein granted to it by the Town shall be deemed revoked as of the date of the Notice and that any period of time given or prescribed in the Notice or as provided herein, within which the said construction to be so removed from the right-of-way/easement is solely for the purpose of accommodating the Owner in so doing, but the Owner shall remain, nevertheless, liable hereunder until, and unless, released from liability hereunder by the Town of Orangetown. Upon the Owner's failure to remove the said construction from the right-of-way/easement within the applicable period given or prescribed herein, then the Town may, but shall not be obligated, to remove, or cause to be removed, the said construction from the right-of-way/easement at any time thereafter without further notice, at the sole cost and expense of the Owner, which cost and expense shall be payable, upon demand, by the Owner and creates a lien upon the premises in favor of the Town until paid in full by the Owner.

FIFTH: The Owner agrees to indemnify and hold harmless and defend the Town from any and all liability or responsibility in connection with, or related to, the said construction and/or this Agreement, including, without limitation, any claims, proceedings, legal fees, and any and all liability and responsibility in connection therewith or related thereto for any property damage and/or personal injury claim, and any damage or injury to the right of way area and/or the premises which may be the result of, or attributable to, any property damage or personal injury caused by the Town, its employees and/or agents due to the failure or timely failure of the Owner to act hereunder or comply herewith, or with any Notice given it, in accordance with, or pursuant to, or as contemplated by the provisions of this Agreement and which are the express


obligation hereunder on the part of the Owner to perform and/or which result, directly or indirectly, from the exercise by the Town of its rights under, or related or incidental to, the right-of-way/easement.

SIXTH: The Owner agrees not to assert against the Town any relinquishment or abandonment, or claims thereof, or other estate, interest and/or rights held by the Town in or to the right of way, or any part thereof, and further agrees that the revocable license hereby created or granted to it by the Town neither impairs nor diminishes any of the rights afforded to the Town by virtue of the right of way.

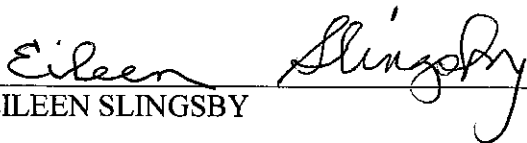
SEVENTH: The Owner acknowledges and agrees that this Agreement pertains to the construction located at 9 Valenza Lane, Blauvelt, NY. If said construction is removed for any reason, this revocable license shall terminate immediately. This Agreement does not allow for replacement construction to be erected in the place of the existing encroaching construction.

EIGHTH: This Agreement shall be binding upon the Owner, its successors and/or assigns and shall inure to the benefit of the Town, its successors and/or assigns.

IN WITNESS WHEREOF, the parties hereto have signed and sealed, or caused to be signed and sealed by their duly authorized representatives, this instrument as of the date first above written.



ROBERT SLINGSBY



EILEEN SLINGSBY

TOWN OF ORANGETOWN

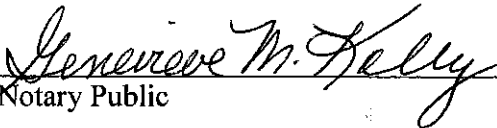
ROBERT V. MAGRINO

By: _____

Title: Town Attorney

STATE OF NEW YORK)
 ss.:
COUNTY OF ROCKLAND)

On the 7 day of JANUARY in the year 2022 before me, the undersigned, a notary public in and for said state, personally appeared ROBERT SLINGSBY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

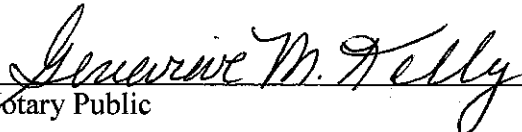


Notary Public

Genevieve M Kelly
Notary Public, State of New York
No. 01KE6263737
Qualified in Rockland County
My Commission Expires: 06/11/2024

STATE OF NEW YORK)
 ss.:
COUNTY OF ROCKLAND)

On the 7 day of JANUARY in the year 2022 before me, the undersigned, a notary public in and for said state, personally appeared EILEEN SLINGSBY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Genevieve M Kelly
Notary Public, State of New York
No. 01KE6263737
Qualified in Rockland County
My Commission Expires: 06/11/2024

STATE OF NEW YORK)
 ss.:
COUNTY OF ROCKLAND)

On the _____ day of _____ in the year 2022 before me, the undersigned, a notary public in and for said state, personally appeared ROBERT V. MAGRINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**WASHING BOARD LAUNDROMAT
52 North Middletown Road
Pearl River, NY 10965**

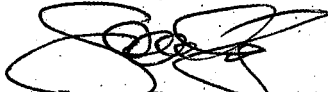
January, 2022

Town of Orangetown
26 Orangeburg Road
Orangeburg, NY 10965

Attn: Robert Magrino, Esq., Town Attorney

I am requesting that the Performance Bond be waived for the contract that we were awarded for 2022 – 2023 for washing, dry cleaning and minor repair services for police uniforms. I am requesting this due to our positive 10 year performance history of this service.

Thank you,



Joann Incognoli

From: Cheryl Coopersmith
Sent: Tuesday, November 23, 2021 11:46 AM
To: Jane Slavin <jslavin@orangetown.com>
Subject: Retirement

Dear Jane,

With just months shy of 30 years of service, per our conversation this morning, I will be retiring from the Town of Orangetown as Chief Clerk, Boards and Commissions, effective January 24, 2022. My last day of work will be Friday, January 21, 2022. I have enjoyed my tenure working here and hope my contributions have been more than sufficient.

I very much appreciate you wanting me to continue working in my present capacity but at this writing, I do not think that will be best for the Town or myself. In addition, you did mention working on a part-time basis after my retirement. This is something I would consider, but it would involve considerations such as responsibilities, work hours, salary and work space. I am both open and willing to discuss all with you. Please let me know when you have given these considerations some thought.

In the past 30 years, I have had the privilege of working with three directors. With your kind offers and my discussion with the other two, I feel good about the work I have done and accomplished in my role for the Town of Orangetown.

Sincerely,
Cheryl A. Coopersmith

**TOWN OF ORANGETOWN
FINANCE OFFICE MEMORANDUM**

TO: THE TOWN BOARD
FROM: JEFF BENCIK, *DIRECTOR OF FINANCE*
SUBJECT: AUDIT MEMO
DATE: 1/13/2022
CC: DEPARTMENT HEADS



The audit for the Town Board Meeting of 1/18/2022 consists of 2 warrants for a total of \$918,926.50.

The first warrant had 121 vouchers for \$424,485 and had the following items of interest (2021 items).

1. Atlantic Salt (p4) - \$39,324 for Highway salt purchases.
2. Barclay Damon (p5) - \$13,279 for judgments and claims related to Pfizer tax certiorari defense.
3. Bluefields Contracting Corp. (p9) - \$8,979 for escrow return.
4. Commissioner of Finance (p13) - \$74,344 for tax certiorari refunds.
5. County of Rockland (p13) - \$12,439 for Police training expenses.
6. Global Montello (p19) - \$38,616 for fuel.
7. Keane & Beane (p23) - \$10,033 for outside counsel.
8. KJTM (p24) - \$12,500 for shade tree planting.
9. Morano Brothers (p25) - \$116,632 for N. Middletown Rd. project.
10. Nyack Senior Citizens Club (p27) - \$6,061 for program reimbursement.
11. Piermont Senior Citizens Club (p28) - \$5,850 for program reimbursement
12. Rockland County Dept. of Highways (p30) - \$15,631 for road striping.
13. Verde Electric (p38) - \$5,075 for traffic signal maintenance contract.

The second warrant had 10 vouchers for \$494,441 and had the following items of interest (2022 items).

14. Applied Golf (p1) - \$124,500 for Blue Hill management contract.
15. Applied Golf (p1) - \$49,583 for Broadacres management contract.
16. Beckmann Appraisals (p1) - \$5,500 for tax certiorari defense.

17. County of Rockland (p2) - \$309,600 for Pearl River Campus PILOT (pass through).

Please feel free to contact me with any questions or comments.

Jeffrey W. Bencik, CFA

845-359-5100 x2204

Town Of Orangetown

DATE: January 18th, 2022

WARRANT

Warrant Reference	Warrant #		Amount
Approved for payment in the amount of			
	122921	\$	424,485.38
	011822	\$	494,441.12
	Total	\$	918,926.50

The above listed claims are approved and ordered paid from the appropriations indicated.

APPROVAL FOR PAYMENT

AUDITING BOARD

Councilman Gerald Bottari

Councilman Paul Valentine

Councilman Thomas Diviny

Councilman Brian Donohue

Supervisor Teresa M. Kenny