

**CITY OF RYE
1051 BOSTON POST ROAD
RYE, NY 10580**

AGENDA

**REGULAR MEETING OF THE CITY COUNCIL
COUNCIL CHAMBERS, CITY HALL
Wednesday, February 7, 2018
7:30 p.m.**

Please Note: The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss litigation.

1. Pledge of Allegiance.
2. Unveiling and dedication of photograph honoring former Mayor Douglas French.
3. Roll Call.
4. Draft unapproved minutes of the regular meeting of the City Council held January 24, 2018.
5. Residents may be heard on matters for Council consideration that do not appear on the agenda.
6. Appointment of Council Liaison to the Senior Advocacy Committee.
7. Appointments to Boards and Commissions, by the Mayor with Council approval.
8. Status Report regarding United Hospital Site related to traffic study.
9. Continued discussion regarding proposed amendment to the City code related to the PACE financing program.
10. Status Report regarding the Last Mile project.
11. Discussion related to the Tunnel to Long Island.
12. Consideration of request for permission to close a section of Purchase Street for the 66th Annual Celebration of the Halloween Window Painting Contest.
13. Consideration of a request to hold the Annual Turkey Run Road on Saturday, November 24, 2018.

14. Consideration of a request to hold the Annual Food Truck Festival Saturday, June 23, 2018.
15. Consideration of a resolution to transfer \$3,100 from the Cable TV Unassigned Fund balance to the Cable TV Operating Budget to cover the change order for CBG Communications, Inc. to provide additional services. Roll Call.
16. Consideration of a resolution authorizing a change order for CBG Communications, Inc., in the amount of \$3,100 for testing of Cable Plant and FCC Compliance review regarding digital transmitted channels. Roll Call.
17. Miscellaneous communications and reports.
18. Old Business.
19. New Business.
20. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, February 28, 2018.

City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under "RyeTV Live".

The Mayor and City Council have office hours in the Mayor's Conference Room Annex at Rye City Hall, 1051 Boston Post Road. The Mayor's Conference Room Annex is located on the 1st floor of City Hall adjacent to the Council Chambers. Hours are as follows:

Mondays 9:00 a.m. to 10:30 a.m.

Councilwoman Danielle Tagger-Epstein & Councilwoman Julie Souza

Wednesdays 9:00 a.m. to 10:30 a.m.

Mayor Josh Cohn, Deputy Mayor Emily Hurd & Councilwoman Sara Goddard

DRAFT UNAPPROVED MINUTES of
the Regular Meeting of the City Council of the
City of Rye held in City Hall on January 24, 2018,
at 7:30 P.M.

PRESENT:

JOSH COHN, Mayor
SARA GODDARD
EMILY HURD
RICHARD MECCA
JULIE SOUZA
BENJAMIN STACKS
DANIELLE TAGGER-EPSTEIN
Councilmembers

ABSENT:

None

The Council convened at 6:30 P.M. Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn immediately into executive session at 6:30 P.M. to discuss personnel and litigation matters.

At 7:30 P.M., Councilman Mecca made a motion, seconded by Councilwoman Souza, to adjourn the executive session. The regular meeting of the City Council began at 7:35 P.M.

1. Pledge of Allegiance.

Mayor Cohn called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call.

Mayor Cohn asked the City Clerk to call the roll; a quorum was present to conduct official City business.

3. Draft unapproved minutes of the regular meeting of the City Council held January 10, 2018.

Councilwoman Hurd made a motion, seconded by Councilwoman Souza, to adopt the minutes of the regular meeting of the City Council held January 10, 2018.

4. Residents may be heard on matters for Council consideration that do not appear on the agenda.

Howard Deixler, Rye resident, expressed concern over downtown parking in the central business district. He asked that parking be benefitted by advanced mobile technology

for payment. He also asked the Council to do something about the noise and pollution generated by leaf blowers.

John Linder, Rye resident, stated he was upset with the Rye Town Park Commission's lack of response to his comments of reported disrepair throughout the park. He asked the Council to help with the park issues, such as the off-leash dog regulations, maintenance and lighting.

Councilwoman Hurd thanked Mr. Linder for his comments. She reminded the public that with regard to off-leash dog permits, all wanting to participate in that program must obtain an off-leash permit from the City Clerk.

5. Continuation of the Public Hearing to amend the Rye City Code: (a) local law Chapter 133, "Noise", by amending Section §133-4, "Points and method for measuring intensity of sound" to regulate placement and noise of telecommunication devices; (b) local law Chapter 167, "Streets and Sidewalks", to add a new 196, "Wireless Telecommunications Facilities", by amending Sections §196-3 through §196-8, §196-14, §196-17, §196-18, and §196-22 to regulate wireless facilities and structures regarding size, visual impact and permit process.

The City Council intends to close the public hearing and table the proposed laws at this time and does not intend to take any public comment.

Mayor Cohn explained that the issue needed more thoughtful consideration and would be continued at a different time.

Councilman Stacks made a motion, seconded by Councilwoman Hurd, to continue the public hearing at a later time and date to be determined.

6. Presentation by Energize NY and consideration to set a Public Hearing for February 28, 2018 to amend local law Chapter 176, "Energy Conservation", of the Rye City Code by amending provisions related to the Sustainable Energy Loan Program in the City of Rye in accordance with Article 5-L of the General Municipal Law.

Councilwoman Goddard explained that the Energize NY and the Energy Improvement Corporation (EIC) administers a financing initiative called the Property Assessed Clean Energy program (PACE) to finance energy improvements. The City of Rye passed Local Law Chapter 176 in 2014 adopting the PACE program, but limited the program to cover nonprofit entities. Councilwoman Goddard gave further legislative history on the local law that was passed, stating that any potential issues were outweighed by the benefits of clean energy. She explained that the New York State PACE law was amended in September 2017 ("PACE 2.0"), and the EIC was present at the meeting to provide background to the Council.

City Manager Serrano disclosed on the record that he was a board member and Chair of the Audit Committee of the EIC.

Sarah Smiley, Energize NY, presented a slide show to the Council on the relevant points regarding PACE 2.0. She explained that the EIC was a nonprofit entity comprised of municipalities, which the City joined in 2015. She generally explained PACE, which helps property owners who plan on clean energy improvements with financing up to 100%. She explained that the State views this program favorably, as updating energy systems to be more responsible is considered a public benefit. She said that 48 municipalities had passed the local law required to enable PACE financing. Ms. Smiley explained that General Municipal Law Article 5-L was amended in 2017 to make the financing program more accessible for energy savings. Ms. Smiley explained that the amendments to the law do affect current members of the EIC, such as the City, as they will now be required to adopt the new amendments. She explained the new amendments in detail for the Council, as well as finance criteria, which includes a renewable energy feasibility study.

Councilwoman Souza asked for clarification on the residential properties not being privately-owned. Ms. Smiley responded that in the case of a residential property, the property would need to be held by a corporation or similar entity, and usually occurs in the case of a multifamily dwelling.

Mark Thielking, Energize NY, responded further that financing in a residential case would be for long-term owners maintaining a corporate structure. He explained that Energize NY would oversee the transfer of property and use its judgment to ensure that a private entity would be prevented from using program. Councilwoman Souza asked if that would run the risk of discrimination issues. Mr. Thielking explained the prepayment mechanism allowed under PACE 2.0.

Councilman Mecca said that it the program seems to match the building code with respect to different types of property uses. Mr. Thielking said that the program did not allow for private benefit.

Councilman Hurd asked for general clarification on the amendments. She reiterated that the City had adopted the program in 2014, extended only to nonprofits.

Ms. Smiley explained that generally, the State recognized that the law as originally written was too restrictive, which is why the amendments were put in place.

Councilwoman Hurd asked about the opt-in portion of the amendments, and asked if the City would have the opportunity to modify the way the program ran within the municipality. Mr. Thielking responded that the City could modify the program the way it wanted.

Councilwoman Goddard confirmed that the City would still need to adopt a local law with regard to PACE 2.0.

There was general discussion over the Wainwright House energy project which was successful.

Councilwoman Goddard asked about the average size of these loans. Mr. Thielking responded that the average loan was about \$180,000, but it is anticipated that the average will go up.

Mayor Cohn asked if there was any data on foreclosures or bankruptcy situations with the roll-out of PACE 2.0.

Mr. Thielking said that in Connecticut, there had been very few delinquencies out of hundreds of projects completed, which speaks to the way that PACE is being managed. There was also discussion over the fact that California runs a successful program which includes single family homes.

Councilwoman Hurd said that the central business district contains many historical buildings that may benefit from the program and asked about experiences with moving from nonprofits to a broader audience. Ms. Smiley responded that municipalities with older buildings are a good candidate for that broader expansion. Mr. Thielking added that they had financed commercial residential, nonprofits, airports and other types of varieties of projects that have been benefited by clean energy.

Councilwoman Tagger-Epstein inquired as to whether several buildings coming forward at the same time for financing would result in a better loan structure offered by the program.

Mr. Thielking said that Energize NY was considering reducing fees under PACE 2.0 of a certain size project. He said that the program was self-supporting, and the members are not charged anything.

Councilwoman Hurd asked if the municipality-owned infrastructure would be a candidate for PACE 2.0, such as the outdated HVAC system in City Hall. Mr. Thielking responded that unfortunately, municipalities are not candidates for this type of funding.

Councilwoman Goddard made a motion, seconded by Councilman Mecca, to set a public hearing for February 28, 2018 to amend local law Chapter 176, "Energy Conservation", of the Rye City Code by amending provisions related to the Sustainable Energy Loan Program in the City of Rye in accordance with Article 5-L of the General Municipal Law.

7. Appointments to Boards and Commissions, by the Mayor with Council approval.

A) *One appointment to the Board of Ethics for a three-year term.*

Mayor Cohn reappointed Edward B. Dunn to the Board of Ethics for a three year term, expiring January 1, 2021.

B) *Three appointments to the Conservation Commission/Advisory Council for a three-year term.*

Mayor Cohn reappointed C. Nicholas Hodnett and Tracy Stora, and appointed Andrea Alban Davies to the Conservation Commission/ Advisory Council for three year terms, expiring January 1, 2021.

C) Three appointments to the Traffic & Pedestrian Safety Committee for a three-year term.

Mayor Cohn appointed Elizabeth Parks and Kelsey Johnson to the Traffic & Pedestrian Safety Committee for three year terms, expiring January 1, 2021.

Mayor Cohn also reappointed Nicholas Loddo, Jr. to fill the unexpired term of Ben Stacks to the Traffic & Pedestrian Safety Committee for three year terms, expiring January 1, 2020.

D) Three appointments to the Planning Commission for a three-year term.

Mayor Cohn reappointed Nicholas Everett and Martha Monserrate to the Planning Commission for three year term, expiring January 1, 2021.

Mayor Cohn also appointed Steven Secon to fill the unexpired term of Hugh Greechan to the Planning Commission for a term expiring January 1, 2020. Mayor Cohn thanked Mr. Greechan for his service on the Planning Commission.

Councilwoman Souza made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried by the Council, to accept the appointments made by the Mayor.

8. Designation of the Chair of the Planning Commission by the Mayor.

Mayor Cohn appointed Nicholas Everett as the Chair of the Planning Commission.

9. Consideration of a request by the Westchester County chapter of the National Alliance on Mental Illness (NAMI) to have a ribbon initiative in the Central Business District during the month of May 2018.

Mayor Cohn explained that the NAMI event in May is something that the City has approved previously.

Clare Walsh, Westchester Chapter of NAMI, asked for the Council's permission to display ribbons in the month of May 2018 throughout the City for awareness of mental illness.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd and unanimously carried, to approve the request by the Westchester County chapter of the National Alliance on Mental Illness (NAMI) to have a ribbon initiative in the Central Business District during the month of May 2018.

10. Consideration of a request by the American Legion Post 128 and the Ladies Auxiliary of Post 128 to approve a parade to commemorate Memorial Day to be held on Monday, May 28, 2018 from 9:45 a.m. to 10:15 a.m.
11. Consideration of a request by the American Legion Post 128 and the Ladies Auxiliary of Post 128 to have a food truck at the Memorial Day event to be held on Monday, May 28, 2018 from 9:45 a.m. to 10:15 a.m.

Items 10 and 11 were taken together.

Robin Latimer, on behalf of the American Legion and Ladies Auxiliary of Post 128, asked for Council approval to hold the annual Memorial Day parade. She also asked for Council approval to have a food truck at the event.

Councilwoman Hurd asked if a school could march in the parade. Mrs. Latimer responded that they would welcome any organization that would like to march.

Councilman Mecca made a motion, seconded by Councilwoman Tagger-Epstein and unanimously carried, to approve the requests by the American Legion Post 128 and the Ladies Auxiliary of Post 128 to approve a parade to commemorate Memorial Day to be held on Monday, May 28, 2018 from 9:45 a.m. to 10:15 a.m. and to allow for a food truck during that time.

12. Miscellaneous communications and reports.

Councilwoman Souza stated that Rye Recreation had announced its registration dates for summer camp. She encouraged residents to find information on the Rye Recreation website. She also announced that there are summer employment opportunities listed as well. Councilwoman Souza also announced that there will be upcoming recreation program events for President's Day and other school closure days, such as a Family Skate and Open Gym at Rye Country Day School. She also mentioned other programs, such as a Mad Science Camp. Specific information can be found on Rye Recreation's website.

Councilwoman Tagger-Epstein announced that the Human Rights Commission now has a live website and Facebook page (@humanrightstrye). She said that the Commission would be posting information on initiatives and upcoming events. The website is www.humanrightstrye.org the email address is humanrights@ryeny.gov.

Councilwoman Hurd announced that the Rye Town Park Commission approved an IT consultant who will provide a systematic overview of IT needs. She said the Commission was also interviewing for the Rye Town Park Director position and also finalizing an agreement with the restaurant to occupy the old Seaside Johnny's space. Councilwoman Hurd also announced that the renewal process has begun for the 2018 Boat Basin season. She said it was imperative that permit holders renew before the February 15, 2018 deadline to avoid late fees. She also updated the Council and community on the dredging project,

which was moving along in the process. Sample locations have been chosen for dredging, with testing taking about two weeks, with results thereafter, taking an additional four to five weeks. Lastly, she stated that the permitting phase takes about six months, so dredging will take place as planned in winter 2018 to spring 2019.

Councilman Mecca updated the Council on the Planning Commission. He said that of note, the Commission heard an application for the proposed subdivision located at 3 Club Road. He said that that Commission also heard the application of 280 Purchase Street, which the Council recently approved the zoning amendments on to ensure uniform zoning for that lot.

Councilwoman Goddard was happy to announce that there was a new interactive sanitation calendar on the City of Rye website. She explained that the calendar can be customized to a resident's particular property. She thanked DPW for their hard work in this helpful endeavor.

13. Old Business.

There was nothing discussed under this agenda item.

14. New Business.

Mayor Cohn made an announcement that there will be regular office hours of the City Council in City Hall starting Monday, January 29, 2018. The schedule will be as follows:

- Mondays: Councilwomen Souza and Tagger-Epstein - 9:30 to 11:00 A.M.
- Wednesdays: Mayor Cohn, Councilwomen Hurd and Goddard - 9:00 to 10:30 A.M.
- Saturdays: Councilmen Mecca and Stacks – TBD

15. Adjournment.

There being no further business to discuss, Councilman Mecca made a motion, seconded by Councilman Stacks to adjourn the regular meeting of the City Council at 8:34 P.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

NO. 12

DEPT.: City Manager's Office

DATE: February 7, 2018

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration of request to close a section of Purchase Street on Sunday, October 21, 2018 (rain date October 28, 2018), for events to be held in conjunction with the 66th Annual Halloween Window Painting Contest.

FOR THE MEETING OF:

February 7, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council approve the request.

IMPACT: Environmental Fiscal Neighborhood Other:

Closing a section of Purchase Street for activities related to the Halloween Window Painting Contest will have minimal effect on the area.

BACKGROUND: The City Manager's Office received a request from the Recreation Department asking that Purchase Street, from the Square House (Boston Post Road) to Purdy Avenue, be closed from 8:00 am to 3:15 pm and 2nd Street between Hand Rolled Bagels and the Town Dock on Sunday, October 21, 2018 for the Annual Halloween Window Painting Contest. Special activities, including street entertainment from 10:00 am to 2:30 pm have been planned on Purchase Street during the day. The rain date will be Sunday, October 28, 2018.

See attached.

INTEROFFICE MEMORANDUM

TO: MARCUS SERRANO, CITY MANAGER
FROM: GREGORY BEAN
SUBJECT: HALLOWEEN WINDOW PAINTING 2018
DATE: FEBRUARY 2, 2018
CC: SALLY ROGOL, SUPERINTENDENT

Rye Recreation would like to request closing of Purchase Street for the 66th Annual Celebration of the Halloween Window Painting Event. This year's event will take place on Sunday, October 21, 2018 with a rain date of Sunday, October 28, 2018.

- Closing of Purchase Street from the Square House (Boston Post Road) to Purdy Ave from 8:00 – 3:15 p.m. Also, the closing of 2nd Street between Hand Rolled Bagels and the Town Dock. This will provide a safe place for the more than 1,200 youngsters and their families who participate in this event throughout the day.
- The closing of the street will be coordinated with the Rye Police Department so that all safety issues are taken into account. Rye/Port Chester EMS will be on stand-by during the day as well.
- On street entertainment will be performed between 10:00 – 2:30 p.m.

If you have any questions or concerns, please let me know.

Gregory Bean
281 Midland Ave.
Rye, NY 10580
(914)967-2535
Gbean@ryeny.gov



CITY COUNCIL AGENDA

NO. 13 DEPT.: City Manager's Office DATE: February 7, 2018
CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration of request to hold the annual Turkey run road race on Saturday, November 24, 2018.

FOR THE MEETING OF:
February 7, 2016
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council approve the request.

IMPACT: Environmental Fiscal Neighborhood Other:

Closing a section of Purchase Street for activities related to the Halloween Window Painting Contest will have minimal effect on the area.

BACKGROUND: The City Manager's Office received a request from the Recreation Department asking for the Recreation Department to hold their 42nd Annual Turkey Run Road Race on Saturday, November 24, 2018 from 9:00am to 11:30am.

See attached.

INTEROFFICE MEMORANDUM

TO: MARCUS SERRANO, CITY MANAGER
FROM: ERIN MANTZ, ASSISTANT SUPERINTENDENT
SUBJECT: RECREATION 42ND ANNUAL TURKEY RUN ROAD RACE
DATE: FEBRUARY 2, 2018

Rye Recreation would like to request permission for the 42nd Annual Turkey Run Road Race on Saturday, November 24, 2018. The race is scheduled to run from 9-11:30 AM, and will both start and end at Rye Recreation Park on Midland Avenue.

Rye Recreation plans on working with Rye Police and Westchester County Police in regards to any assistance we may need in regards to traffic and safety during the event. Rye/Port Chester EMS will be on stand-by during the day as well.

Rye Recreation looks forward to once again running a successful and safe event.

Please let me know if you need any additional information.



CITY COUNCIL AGENDA

NO. 14 DEPT.: City Manager's Office DATE: February 7, 2018
CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration of request to hold the Annual Food Truck Festival Saturday, June 23, 2018.

FOR THE MEETING OF:

February 7, 2016

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council approve the request.

IMPACT: Environmental Fiscal Neighborhood Other:
Waive § 144-8D and G of the City Code.

BACKGROUND: The City Manager's Office received a request from the Recreation Department asking for the Recreation Department to hold their 3rd Annual Food Truck Festival on Saturday, June 23, 2018. The Council will have to waive § 144-8D and G which states;

§144-8 Restrictions states that licensed hawker, peddler or solicitor shall:

D. Not stand nor permit the vehicle used by him or her to stand in one place in any public place or street for more than 10 minutes or in front of any premises for any time if the owner or lessee of the ground floor thereof objects.

G. Not create or maintain any booth or stand, or place any barrels, boxes, crates or other obstructions, upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.

See attached.

INTEROFFICE MEMORANDUM

TO: MARCUS SERRANO, CITY MANAGER
FROM: ERIN MANTZ, ASSISTANT SUPERINTENDENT
SUBJECT: RECREATION FOOD TRUCK FESTIVAL 2018
DATE: FEBRUARY 2, 2018

Rye Recreation would like to request permission for the 3rd Annual Food Truck Festival on Saturday, June 23, 2018.

We understand that the local code § 144-8 Restrictions states that licensed hawker, peddler or solicitor shall:

D. Not stand nor permit the vehicle used by him or her to stand in one place in any public place or street for more than 10 minutes or in front of any premises for any time if the owner or lessee of the ground floor thereof objects.

G. Not create or maintain any booth or stand, or place any barrels, boxes, crates or other obstructions, upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.

Both of these restrictions would need to be overridden for us to host our event.

Please let me know if you need any additional information.



CITY COUNCIL AGENDA

NO. 15

DEPT.: City Manager

DATE: February 7, 2018

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution to transfer \$3,100 from the Cable TV Unassigned Fund balance to the Cable TV Operating Budget to cover the cost of a change order for CBG Communications, Inc. to increase the scope of work to include testing of cable plant and FCC compliance review.

FOR THE MEETING OF:
February 7, 2018

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, on November 8, 2017 the City Council approved to retain the services of CBG Communications, Inc. to provide a technical review and evaluation of the cable systems for the cable franchise renewal negotiations. City staff has determined that the amounts required to perform these services were not anticipated and was not provided for in the adopted 2017 budget by \$36,800, and;

WHEREAS, on November 8, 2017 the City Council authorized to transfer \$36,800 from the Cable TV Unassigned Fund balance to the Cable TV Operating Budget to complete a technical review and evaluation of the cable systems as part of the cable franchise renewal process, and;

WHEREAS, after additional review staff recommends that the City Council consider increasing the scope of work to include testing of cable plant and FCC compliance review in the amount of \$3,100, and;

WHEREAS, the Cable TV Unassigned Fund balance has enough funds to be appropriated to cover the change order amount of \$3,100 for CBG Communications, Inc. to complete testing of cable plant and FCC compliance review of the cable systems for the City, now, therefore be it;

RESOLVED, that the City Comptroller is authorized to transfer \$3,100 from the Cable TV Unassigned Fund balance to the Cable TV Operating Budget to complete the testing of cable plant and FCC compliance review of the cable systems as part of the cable franchise renewal process.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The City Council will consider the transfer of funds to cover the cost for CBG Communications, Inc. to increase their scope of work to provide the testing of cable plant and FCC compliance review. The staff believes this is beneficial to the City in its cable franchise renewal process. The City Council is asked to transfer the funds from the Cable TV Unassigned Fund balance to the Cable TV Operating Budget.



CITY COUNCIL AGENDA

NO. 16

DEPT.: City Manager

DATE: February 7, 2018

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution authorize a change order in the amount of \$3,100 to increase the scope of services for CBG Communications, Inc. to include testing of cable plant and FCC compliance review.

FOR THE MEETING OF:
February 7, 2018

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, the City Council retained the services of CBG Communications on November 8, 2017 to provide a Cable Television System Technical Review and Audit Project, and;

WHEREAS, after discussions between staff and CBG Communications, the staff believes that it would be in the best interest of the City to increase the scope of the agreement to include testing of cable plant and FCC compliance review, now, therefore be it;

RESOLVED, that the City Manager is authorized sign a change order in the amount of \$3,100 to increase the scope of work as described above.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: During the process of the review by CBG Communications staff determined that this additional review would be helpful in discussions with Verizon and Altice (Cablevision) during our franchise negotiations. The City Council is asked to approve the change order with CBG Communications, Inc. in the amount of \$3,100 to complete the testing of cable plant and FCC compliance review.

See attached.

memo

RyeTV

To: Marcus Serrano, City Manager
From: Levitsky, Nicole T., RTV Coordinator
Date: January 30, 2018
Re: Change Order Technical Audit

We would like to change the original contract with CBG Communications, Inc. to also include task # 7, testing of cable plant and FCC compliance review. The additional cost is \$3,100, to be appropriated from the RyeTV Fund balance. The amendment to the agreement is attached.

While the technical audit is comprehensive, the initial agreement excluded the compliance of cable companies to specs for digital transmissions. These tests will look at 4 locations with the cable companies to ensure that tests are done correctly and are within standards. It will also include analysis of the quality of the channels. We did not fully appreciate the necessity of task #7 for a fully comprehensive technical audit until meeting with the technicians for a better understanding of what this entails.

CITY OF RYE, NEW YORK

AGREEMENT TO FURNISH CONSULTING SERVICES "Cable Television System Technical Review and Audit Project"

Amendment #1

THIS Amendment to the Agreement between the City of Rye, New York (hereinafter called the "City"), and CBG Communications, Inc., a Minnesota corporation (hereinafter called the "Consultant" or "CBG") is subject to the following conditions:

1. Except as noted herein, all provisions of the current Agreement shall remain in full force.
2. The City agrees to pay the Consultant an additional amount not to exceed **\$3,100.00 (AGREEMENT total is revised to \$39,900 from the original \$36,800) including all travel and other expenses** (unless the City and Consultant mutually agree in writing to exceed this amount) for performance of those services described herein, which payment shall be based upon the applicable terms of the original Agreement.
3. Scope of Work is expanded to include these tasks and/or deliverables:
 - a. **Testing of Cable Plant and FCC Compliance Review** - CBG will work with Altice and Verizon to determine the level of compliance with §47CFR76.640. This is a set of standards that is in place whereby cable TV operators must comply with specifications for digitally transmitted channels. The Standard does not provide for a frequency of testing or documentation process, as was required of the analog based specifications in previously performed Proof of Performance testing (on analog based channels), but it does require the system to meet the Standards. CBG will then work with both providers to include this testing in the "over the shoulder" testing described below.

This will provide CBG with a baseline understanding of whether the system is performing within these parameters.

CBG will then perform on-site "over-the-shoulder" objective testing in the field at four representative test locations within one or both of the providers' systems as requested by the City. Over-the-shoulder testing means we oversee testing being performed by the operators' staff while utilizing their test equipment. This allows us to evaluate whether proper test methodologies and equipment are being utilized by the provider and then alleviates potential disagreements concerning the results found during testing, once the methodologies and equipment are certified as appropriate and accurate. In addition to this testing, CBG will perform subjective viewing of subscriber system channels for quality characteristics.

4. The effective date of this Amendment shall be January 10, 2018.

In acknowledgement of the aforementioned, these authorized representatives of CBG and the City do hereby indicate their agreement.

CONSULTANT:

CITY:

BY: 

BY: _____

Thomas Robinson
ITS: President, CBG Communications, Inc.

Kristen K. Wilson, Esq
ITS: Corporation Counsel, City of Rye

DATE: January 10, 2018 _____

DATE: _____

AGREEMENT TO FURNISH CONSULTING SERVICES

THIS AGREEMENT TO FURNISH CONSULTING SERVICES ("Agreement") is made and entered into at Rye, NY, effective as of the 27th day of November, 2017, by and between the City of Rye, New York ("City") and CBG Communications, Inc., a Minnesota Corporation ("Consultant" or "CBG").

WHEREAS, the City desires to engage the Consultant to render the consulting services described in this Agreement and Consultant is qualified and willing to perform such services in accordance with and subject to the provisions of this Agreement; and

WHEREAS, sufficient legal authority and sufficient funds exist and are available for the work to be performed by Consultant under this Agreement and other necessary approvals have been obtained.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the parties agree as follows:

1. **The Project.** The Project ("Project") for which the Consultant has been retained is to perform a cable television system technical review and audit in conjunction with the City's Cable Television Franchise Renewal Process, as more particularly described in the hereafter described Services.
2. **Consultant's Services.** The Consultant shall provide the consulting services described in the attached Project Scope of Services, labeled as Exhibit "A" ("Services").
3. **Additional Services.** When authorized by the City, the Consultant agrees to furnish additional consulting services ("Additional Services") in connection with the Project due to changes in the scope of the Project or the City's desire for additional or different work to be performed by Consultant. Consultant shall receive such additional compensation for such Additional Services as is provided for in an amendment made to Exhibit "B".
4. **Consultant's Fees.** The compensation for the Consultant's services hereunder shall be as set forth in the attached Exhibit "B". The Consultant shall submit invoices to the City for services rendered and costs incurred on a monthly basis for the preceding month, such invoices to be in such form and detail as shall reasonably be required by the City. The City agrees to pay the Consultant within thirty (30) days of receipt of a properly documented invoice.
5. **Commencement and Completion of Services.** The Consultant understands and agrees that time is an essential requirement of this Agreement. The Services shall be completed as soon as good practice and due diligence will permit, and according to the proposed schedule and agreed to work plan, which may be modified as necessary by mutual agreement of the parties. The

Consultant agrees to begin providing the services as soon as practicable after this contract is fully executed.

6. Termination.

6.1 This Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party.

6.2 In the event of termination as provided in this Section, the City shall pay the Consultant in full for services performed and costs incurred to the date of notice of termination, plus any services and costs the City deems necessary during the notice period.

7. Insurance.

7.1 Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Consultant pursuant to Paragraph 14 of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by the Agreement or by law. Consultant shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Paragraph 14 of this Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.2 Consultant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City, and all carriers shall have at least a minimum "A" rating from Best. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Consultant pursuant to Paragraph 14 of this Agreement.

(A) Workmen's Compensation insurance to cover obligations imposed by applicable laws for any employee of Consultant engaged in the performance of the work under this Agreement shall be procured, or evidence of qualified self-insured status or exemption under applicable state law may be substituted for the Workmen's Compensation requirements of this Paragraph.

(B) Comprehensive General Liability insurance with minimum combined single limits of \$150,000 per person per occurrence and \$1,000,000 aggregate per occurrence shall be procured. The policy shall be applicable to all premises. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employees' acts), and blanket contractual.

(C) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than \$150,000 per person per occurrence and \$1,000,000 aggregate per occurrence with respect to each of Consultant's non-

owned vehicles assigned to or used in performance of this Agreement shall be procured. The coverages required under this Subparagraph (C) may be part of Consultant's Comprehensive General Liability insurance provided pursuant to Subparagraph (B), above.

(D) Professional Business Liability insurance with minimum combined single limits of \$1,000,000 shall be procured.

7.3 The policies required by Subparagraphs (B) and (C) above shall be endorsed to include the City as an additional insured. Any insurance carried by the City, its officers, or its employees, or carried by or provided through any insurance pool of the City, shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under its policies required above.

7.4 Certificates of insurance shall be completed by Consultant's insurance agent(s) and provided to the City as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect and shall be deemed to have been approved by the City unless the City notifies the Consultant to the contrary.

7.5 Notwithstanding any other portion of this Agreement, failure on the part of the Consultant to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a breach of this Agreement for which the City may, after giving Consultant thirty (30) days' prior written notice, procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.

8. **Subconsultants.** Consultant may use or employ subconsultants in connection with its performance of the Services under this Agreement with the prior written approval of the City.

9. **Compliance with Laws.** Consultant agrees that, in the performance of its Services under this Agreement, it shall comply fully with any and all federal, state and local laws and regulations now in effect, hereafter enacted or otherwise becoming effective during the term of this Agreement which are applicable to Consultant and its employees or the City. Without limiting the generality of the foregoing, Consultant shall not discriminate against any person because of race, sex, disability, age, creed, color, religion or national origin in connection with its performance of this Agreement, and shall comply with the Americans With Disabilities Act, and all applicable regulations and rules promulgated thereunder by any regulatory agency.

10. **Consultant's Handling of Confidential Information.** Consultant understands the importance and requirement of keeping confidential and proprietary information from cable operators confidential. Therefore, Consultant will conduct its review and handling of such information in the same manner as the City may be required in pertinent sections of the Franchises, any associated policy and applicable State and federal law.

11. **Prohibited Interest.** No official or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

12. **Books and Records.** The Consultant's books and records with respect to the Services and reimbursable costs shall be kept in accordance with recognized accounting principles and practices, consistently applied, and will be made available for the City's inspection at all reasonable times at the places where the same may be kept. The Consultant shall not be required to retain such books and records for more than three (3) years after completion of the Services. Consultant shall provide invoices and expense documentation in a form reasonably satisfactory to the City.

13. **Ownership of Documents; Reuse.** All final documents relating to the Services shall be the joint property of the City and Consultant. Upon completion of the Services, or at such other time as the City may require, the Consultant shall deliver to the City a complete set of such final documents and such additional copies thereof as the City may reasonably request.

14. **Professional Liability.** The Consultant shall exercise in its performance of the Services hereunder the standard of care required for Consultant's services. The Consultant shall be liable to the City for any loss, damage or costs incurred by the City as a result of any failure of the Consultant to comply with this standard.

15. **Indemnification.** Consultant agrees to indemnify and hold harmless the City, its officers, and employees, from and against all liability, claims and demands on account of injury, loss or damage, which arise out of or are in any manner connected with this Agreement if such injury, loss or damage is caused in whole or in part by the negligence of Consultant, or any officer, employee, representative, or agent of the Consultant, or which arise out of any worker's compensation claim of any employee of the Consultant except to the extent such liability, claim or demand arises through the negligence of the City, its officers, employees or agents.

16. **Assignment.** This Agreement is for professional services predicated upon Consultant's special abilities or knowledge. The Consultant shall not assign this Agreement in whole or in part without the prior written consent of the City.

17. **Notices.** Any notices required or permitted hereunder shall be sufficient if sent by overnight delivery or certified mail, return receipt requested, addressed as follows:

If to the City:

Kristen K. Wilson, Esq.
Corporation Counsel
City of Rye
1051 Boston Post Road
Rye, New York 10580

If to the Consultant: CBG Communications, Inc.
 c/o Thomas G. Robinson, President
 73 Chestnut Road, Suite 301
 Paoli, PA 19301

Notices personally delivered shall be effective upon delivery. Mailed notices shall be effective five business days after mailing.

18. **Information Prepared by Others.** During the course of the Project, the Consultant may use information which has been prepared by others. The Consultant shall advise the City of any errors or omissions discovered during the use of such information; however, the Consultant shall not be responsible for discovering any or all errors or omissions in such information, nor for any damages attributable to defects in the information prepared by others unless the Consultant knew of the defects and advised the City to proceed regardless.

19. **Attorneys' Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorneys' fees as well as costs, including expert witness fees, incurred in the prosecution or defense of such action.

20. **Applicable Laws.** This Agreement, and all questions concerning its execution, validity or performance shall be interpreted in all respects in accordance with the laws of the State of New York.

21. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior discussions and negotiations, whether written or oral, pertaining to services for the Project.

22. **Modification.** This Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

23. **Copies.** This Agreement may be executed simultaneously in two or more copies, each of which shall be considered an original for all purposes and all of which together shall constitute but one and the same instrument.

24. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

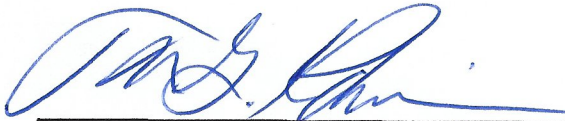
25. **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

26. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first appearing above.

CONSULTANT:
CBG COMMUNICATIONS INC.

THE CITY:
CITY OF RYE, NEW YORK



By: Thomas G. Robinson *11/29/17*
President



By: Marcus A. Serrano
City Manager,
City of Rye, NY

Exhibit A

Scope of Services

CABLE TELEVISION SYSTEM TECHNICAL REVIEW AND AUDIT

Introduction

A Technical Review, Evaluation and Audit of both the Altice and Verizon systems will be performed. The Technical Evaluation will encompass a paper review, and physical infrastructure review, which will give a comprehensive assessment of the system's capabilities, physical condition and performance. In addition, CBG will review the current Access origination links for current functionality and will provide recommendations on potential upgrades or replacement of these links to best meet the needs of the Access communities utilizing these links.

The following Tasks will be performed by CBG:

Base Project

1. Request for Certain Operational Information - CBG will begin by reviewing and evaluating the systems to determine their strengths and weaknesses by developing two Requests for Information (RFI) seeking written responses from Altice and Verizon. We will then engage in discussions with their engineering and technical staffs, in order to gain an understanding of, for example, the systems' current designs, age, condition, system capacity, functionality, cascade length, homes per node, and headend/hub(s). As part of the RFI effort, CBG will request and review as-built and other system maps from both providers to determine whether the systems have been built within specifications.

These RFIs will also ask for outage logs, technical complaint logs, maintenance and repair records and Cumulative Leakage Index (CLI) documentation as well as documents describing various other facets of the systems. CBG will then meet with both company's engineering and technical staffs, in person and/or by conference call, as needed to clarify its initial findings.

CBG will request detailed information on the access origination links deployed by both Providers and utilize this information to determine the age and functionality of these links.

CBG will review the documents provided by Altice and Verizon and create a summary of these findings in the Final Reports.

2. Inspection of Physical Plant - CBG will utilize the information gleaned from the above task and work with the City to plan and refine the overall Technical Review and Audit process including the sampling methodology to determine safety code compliance of both cable plants such as fiber optic and coaxial transmission systems, subscriber installations or drops and the

central control equipment in the headend, Video Serving Offices and hub(s). The Inspection of these systems will encompass a representative system drive-out and review of specific areas of concern to the City to determine the overall condition of the systems from a safety, functionality and aesthetic standpoint. CBG will determine the level of compliance with each Franchise, other pertinent local codes and regulations, the National Electrical Code (NEC) and the National Electrical Safety Code (NESC) as well as good engineering practices. **It will be very important to ensure that any problems found with the systems are corrected and that future compliance with the NEC and NESC are included as requirements of any renewed franchise in coming years.**

Based on discussions with the City, CBG will perform a ride-out independently, or with City staff, to look at physical plant characteristics. This inspection will include the cable distribution plant comprised of the fiber optic, trunk and feeder systems, coaxial cable drops to the subscribers' residences and the headend and hubs that serve the City. The outside plant inspection will include aerial plant inspection for issues such as clearance of the cable TV plant from the ground and other utilities, and attachments at poles and buildings including the drops to homes and businesses. Both underground and aerial plants will be inspected for proper grounding and bonding of the cable TV distribution systems and subscriber's drops as well as other potential problems or violations, including right-of-way restoration issues.

CBG performs the system drive out using a random sample chosen using a statistically valid methodology. Specifically, CBG will work with the City to develop a list or spreadsheet of all addresses in the City and then randomly select 200 addresses based on this list. For example, if the address list has 6,000 addresses in the City we will inspect the plant and drop, where accessible, at every 30th address on the list for a total of 200 locations. This will allow CBG to extrapolate, in a statistically valid manner, the level of violations, issues and concerns throughout the City (with a margin of error of less than $\pm 6.8\%$ with a 95% confidence level).

CBG will then report both the actual numbers of violations found and the statistically valid projection such that not only the observed violations but also the other violations projected throughout the City can be properly remedied.

3. Facility Reviews -The headends and any pertinent hub(s) will be inspected for proper grounding and bonding, fire suppression system(s), back-up powering, status monitoring equipment and Emergency Alert System (EAS) implementation as well as the overall age and condition of equipment being utilized throughout the headends and hub(s).

CBG will develop a list of violations of codes and cite the code that applies to the infraction for each provider. These lists will become an Attachment to each providers' final report with a discussion in each Report detailing the overall level of compliance with pertinent codes.

4. System Maintenance/Reliability – CBG will review both service call logs as well as outage logs for the systems to determine the level of problems within each system. CBG will then use this background information during our site visits to further understand technical issues that may be affecting subscribers. This will also include feedback that we may have gleaned from the meetings with City staff. An example of this would be specific channels that are frequently mentioned as being problematic.

5. Ability to Offer Advanced Services – CBG will identify state-of-the-art technologies/practices that are available, and that have been applied by Altice and Verizon, as well as by other companies, which may be of value to the City. CBG will analyze existing, commonly employed, advanced, near-term, and future technologies/practices that cable companies, including both providers serving the City, have successfully employed and will employ in the future that will be of benefit to subscribers and the City.

Examples include:

- High definition TV (HDTV) and HD4K, including current activation level.
- Interactive systems and uses, including advanced high-speed data-over-cable (broadband cable modem) services, video-on-demand, interactive television (iTV), cable telephone and other two-way technologies.
- Emergency Alert Systems, including those that interface with the Federal EAS system and those that provide local inputs from Emergency Operations Centers, mobile command centers, etc.

CBG will compare the current systems' characteristics with any future system development and upgrade plans and needs. CBG will look at what is currently available (including current channels in use, channel capacity, and planned expansion), plans for any near-term upgrades and additions, and planned and required capabilities of a future system including the ability to provide a wide range of existing and developing technologically advanced and interactive services, including broadband. CBG will further review issues related to system reliability, including types of back-up and network monitoring systems, and any impacts related to system reliability as they may affect both existing and planned services.

In each case, CBG will be able to make a realistic assessment of how these technologies are or can be employed in the existing systems as well as after any upgrades that may be planned or would need to be implemented in the future.

6. Written Reports - CBG will develop two detailed reports, one for each provider, that indicate all findings from the above evaluation processes and that thoroughly assess the current condition of each system. Comparisons will be made between our onsite findings and the information initially received from Altice and Verizon. We will then make appropriate recommendations, to bring both systems into technical compliance with pertinent rules and regulations, and also develop recommendations regarding future system requirements. CBG will then work with the City to take the technical review findings and turn them into realistic requirements, objectives and strategies with respect to the franchise renewal process with each provider.

7. Access Origination Transport Systems and Equipment – CBG will first focus on the technical capabilities of the PEG Access transport network connections for both the City and the School District. This review will evaluate the current transportation system and its capabilities. Based on these findings, CBG will make recommendations on any improvements that should be

made to the system in the short term and we will recommend how to best upgrade the system to transport high definition video and audio signals to the Master Control or other pertinent facility.

In addition, CBG will work with local representatives familiar with other remote origination locations to understand the technologies currently deployed to connect these sites to Master Control or pertinent facility for playback on the subscriber system.

A determination will be made as to what equipment replacements or enhancements need to occur on the transport systems to accommodate HDTV programming onto the PEG channels on the subscriber system. A spreadsheet will be developed outlining this equipment and will provide budgetary numbers for use during franchise negotiations between the City and the providers.

Exhibit B

Compensation

PAYMENT TERMS

Consultant will invoice the City monthly for professional services performed and expenses incurred in the preceding month, beginning the month after the start of work, at the hourly rates of those personnel working on the project, (and one-half the hourly rate for travel). Reimbursable expenses include long distance telephone, contract clerical charges, postage, copy and reproduction expenses, FedEx or courier expenses, other similar expenses, and where needed, travel such as airfare, hotel, ground transportation, etc. Expenses are estimated at 12% of the total professional services cost.

The hourly rates for the personnel that will be involved are the following:

- Tom Robinson (TR), Project Manager - \$175.00
- Dick Nielsen (DN), Senior Engineer - \$175.00
- Krystene Rivers (KR), Research Associate - \$50.00
- Carson Hamlin (CH), Video Engineer/Media Integration Specialist - \$125.00

Consultant will accomplish the tasks detailed above in the Scope of Services (Exhibit A) such that the total cost for the Cable Television System Technical Review and Audit Project will not exceed \$36,800, unless otherwise agreed to in writing by the City and Consultant.

The anticipated tasks and cost breakdowns for each portion of the project are shown below. Consultant may adjust task hours between project tasks and expenses as needed as long as all tasks are completed and the total cost for the project does not exceed \$36,800.

Project Cost

BASE PROJECT (TASK ITEMS 1 THROUGH 6)	
Scope Tasks	Cost
Base Project (Scope items 1 through 6)	\$32,000
Base Project Expenses	\$4,000
Base Project Total	\$36,000
ACCESS ORIGATION TRANSPORT SYSTEMS AND EQUIPMENT (TASK ITEM 7)	
Task Item 7	\$800
Task Item 7 Expenses	\$0.00
Subtotal - Task Item 7	\$800
TOTAL PROJECT	\$36,800