

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

**REGULAR MEETING OF THE CITY COUNCIL
Wednesday, July 13, 2022
6:30 p.m.**

The meeting will be held via zoom video-conferencing with no in-person location and will be broadcast on the city website. A full transcript of the meeting will be made available at a future date.

Please click the link below to join the webinar:

<https://us06web.zoom.us/j/81221937774?pwd=ZFhCWjVpcWhKOU1MKzFVZy9FUHcyUT09>

Or Telephone: (646) 558-8656 or (646) 931-3860

Webinar ID: 812 2193 7774

Passcode: 663628

1. Roll Call
2. Draft unapproved minutes of the Regular Meeting of the City Council held June 15, 2022.
3. Post Ida Storm Update.
4. Authorization for City Manager to engage DCMC Partners and finalize a scope of services, including the development of an initial task order and timeline for execution using Contingency funds.
Roll Call
5. Presentation of the 2021 City Financial results by Brendan K. Kennedy of the auditing firm of BST & Co, LLP.
6. NY State Consolidated Funding Application update.
7. Residents may be heard on matters for Council consideration that do not appear on the agenda.
8. Westchester Power Update and Authorization for City Manager to sign an updated MOU to provide a Community Choice Aggregation Program.

9. Consideration of proposed policies for the City of Rye Fire Department:
 - a. Policy #202 – Electronic mail
 - b. Policy #203 – Department Directives
 - c. Policy #301 – Response Time Standards
 - d. Policy #705 – Personal Communication Devices
 - e. Policy #706 – Photography and Electronic Imaging
 - f. Guideline #1012 – Emergency Recall
 - g. Guideline #1014 – Conduct and Behavior
 - h. Guideline #1015 – Member Speech, Expression and Social Networking
 - i. Guideline #1028 – Personal Appearance

10. Consideration of proposed revisions of the Rules and Regulations of the City of Rye Police Department:
 - a. Policy #324 – Media Relations

11. Authorization for City Manager to enter into a professional contract with an engineering firm to provide technical assistance to the City regarding new blasting and mechanical rock removal legislation. Services will be paid for by City Council funds at a cost not to exceed \$20,000.
Roll Call

12. Resolution to declare certain City equipment as surplus.
Roll Call

CONSENT AGENDA

13. Resolution consenting to the appointment of Mr. John B. Colangelo to the Emergency Medical Services Committee as the Village of Port Chester community representative for a 3-year term.

14. Resolution consenting to the appointment of Mr. Michael Borelli to the Emergency Medical Services Committee as the Village of Rye Brook community representative for a 3-year term.

15. Consideration of a request by the Westchester Triathlon Committee for use of city streets on Sunday, September 18, 2022 from 7:00 a.m. to 6:00 p.m. for their annual Westchester Triathlon.

16. Consideration of a request by Christ's Church to switch the use of Rectory Streets from 8:00-5:00 pm for CCNS Fall Family Day from 10/15/22 to 10/22/22 due to conflict with Novel Night

17. Old Business/New Business.

18. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, August 10, 2022 at 6:30 p.m.

** 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".

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on June 15, 2022, at 7:30 P.M.

PRESENT:

JOSH COHN, Mayor
BILL HENDERSON
EMILY HURD
CAROLINA JOHNSON
JOSHUA NATHAN
JULIE SOUZA
BENJAMIN STACKS
Councilmembers

The Council convened at 6:30 P.M. by videoconference pursuant to the NYS Legislature waiving requirements of the Open Meetings Law. Councilman Stacks made a motion, seconded by Councilwoman Souza, to adjourn briefly into executive session to discuss litigation and personnel matters. The Council reconvened in a public videoconference at 7:30 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Pledge of Allegiance.

Mayor Cohn noted that the City Council meeting returned to a virtual platform due to COVID concerns. Due the virtual setting the Pledge of Allegiance was not recited.

2. Roll Call.

The roll was called and there was a quorum of City Councilmembers.

3. Draft unapproved minutes of the Regular Meeting of the City Council held May 25, 2022.

The city clerk confirmed she made non-substantive, administrative changes to the minutes that were submitted by Councilmembers. Mayor Cohn asked for a motion for approve the minutes and Councilwoman Hurd made the motion, which was seconded by Councilman Stacks. The City Council unanimously approved the minutes of the Regular Meeting held May 25, 2022.

4. Post Ida Storm Update.

Mayor Cohn said he expected draft results of the Blind Brook Watershed Resilient Streams Study towards the end of June with finalization at the end of August. The \$350,000 allocated to the City of Rye is for a CAP-205 study which limits the project cost to \$15 million. More consultations with New York State DEC, Senator Schumer's staff, and the Army Corps are needed. The senator's staffers sent focused funding suggestions for projects dealing with the I-95 and MTA overpass culvert problems which could be massive projects with substantial downstream effects. Mayor Cohn stated the only route to federal funding is through Army Corps authorization, including funds spent independently of the Army Corps. The senator's staff is inserting new

statutory provisions and Army Corps authorization for recreational harbor dredging, but it will not be effective in time for the dredge planned for this fall or winter.

Regarding Blind Brook flooding, Mayor Cohn, City Engineer Ryan Coyne, and City Planner Christian Miller met with Rye Brook's mayor, manager, the administration of Purchase College, and SUNY engineering staff to discuss Ramboll's report on the potential for flood water impoundment on the college campus. Mayor Cohn reported the meeting was positive, but the real dialogue will begin when the engineers from Ramboll and SUNY collaborate.

City Manager Greg Usry stated there are further revisions of Ramboll's work regarding the berms, and the City is still working to engage a funding consultant; the timing should be in lockstep with Ramboll's work and the next round of annual FEMA annual. Recommendations for a consultant should be ready in July.

Councilman Henderson asked City Manager Usry if it would be useful, once the DEC study is obtained, to include Purchase College administration in discussions. City Manager Usry replied that it will be incumbent upon SUNY engineers and the college to engage with the DEC because the college is on land belonging to the state, Harrison, and Rye Brook.

5. Update regarding pricing on Westchester Power Community Energy program.

City Manager Usry referred to a communication recently received from Sustainable Westchester regarding their inability to price a new contract. Sustainable Westchester could not meet the not-to-exceed amounts established in prior City Council meetings and are in the process of sending letters to customers explaining that they are not able to reach a contract price based on the current market. Effective June 30, all customers on the renewable contract will default to the ConEd monthly billing. City Manager Usry hopes that in the next 60-90 days the contracts will be reconstructed to implement the renewable alternative once again. There will be more information in the July or August City Council meeting.

6. Resolution authorizing the expenditure of money from General Funds Unassigned Fund Balance to pay for new equipment for a new and advanced radio system provided through the Metropolitan Transit Authority.

City Manager Usry reminded the Council that last year the City replaced the Computer Assisted Dispatch system for the Rye police department. Another pertinent replacement was being brought to the Council. The police department needs a new, more advanced radio system for police cruisers and for officers to wear on their person. The current radios are old enough to be obsolete.

Commissioner Michael Kopy stated that Rye PD became aware of an MTA project that provides radio service to municipalities including Port Chester and Rye Brook that were already in the process of upgrading the equipment. Municipalities buy the equipment, join the MTA's capable radio system, and pay a nominal maintenance fee to the MTA.

City Manager Usry stated that the expected cost of the radio equipment was between \$650,000 and \$700,000. The request before the Council is to allocate \$600,000 from the

Unassigned Fund balance. City Comptroller Joseph Fazzino reminded the Council that the Unassigned Fund finished at almost \$616,000 over the 10% cap for 2022 and appropriating \$600,000 would leave the cap right at 10%. City Manager Usry stated that any overage would be funded out of the police budget. Commissioner Kopy estimated for Councilman Henderson that the useful life of the new radio system was 10-20 years.

Mayor Cohn requested a motion to authorize the expenditure of General Funds Unassigned Fund balance to pay for new radios for the Rye Police Department. Councilman Henderson made the motion, and Councilwoman Souza seconded the motion.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Nathan, Souza, Stacks

Nays: None

Absent: None

7. Continue the public hearing for consideration of a petition from The Miriam Osborn Memorial Home to amend the text of the City of Rye Zoning Code Association to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

- a. Consideration of a resolution approving a SEQRA Negative Declaration and approving a proposed local law proposed to amend the text of the City of Rye Zoning Code to create new use and development standards for “Senior Living Facilities” in the R-2 Zoning District.

Steven Wrabel, McCullough, Goldberger & Staudt, attorney for the Osborn, said the Osborn submitted the updated zoning proposal with the changes discussed in the March, including reduced FAR, reduced permitted block coverage, building heights, setback regulations, evergreen screening, and codifying the request for a 100-foot parking setback from Post Road. He shared an updated illustrative diagram that was submitted to the Council earlier in the day. In response to Councilwoman Johnson's request for more information about the 400-foot parking setback, he explained the proposed 240-foot setback from Osborn Road for roads and parking areas, as well as a 100-foot setback from Post Road, both of which are required evergreen screening.

Councilwoman Hurd reported that she spoke earlier in the day with the traffic engineering firm and received clarification that the location of the ATR would be the same as in the 2016 DOT traffic study to obtain comparative data. Mayor Cohn added that data collected from the intersection of Osborn Road and Boston Post Road, and Osborn and Theall, were also included in the assessment. Mr. Wrabel confirmed for Councilwoman Hurd that there would be no buildings in the green space setback, though passive recreation was an option. Andrew Tung explained to Councilman Nathan the placement of the chain link fence compared to the blue line on the diagram. Councilwoman Hurd asked if retaining ponds or impervious surfaces could be included in the green space, and Mr. Tung replied that a walkway was possible, but not roadways or parking.

Mayor Cohn opened the meeting for public comments.

Robert November, 4314 Theall Road, President of the Osborn Residents Association, reminded the Council they have received letters of support from the Association, signed by 120 Osborn residents, as well as letters from individual residents. The Osborn residents' quality of life depends on the economic viability of the Osborn in an increasingly competitive market. The residents are sure the expansion will be done in a way that protects the interests of the residents, neighbors, and the beauty of the property.

Bill Pearson, 3 Holly Lane, on behalf of his fellow board members, donors, staff, and more than 400 Rye residents who call the Osborn home, asked the Council to vote in favor of the pending senior living zoning amendment proposal. The Osborn has collaborated with city agencies and neighbors to revise the zoning proposal to improve the campus and address neighborhood concerns. The Osborn has not expanded or upgraded its facilities in 25 years. If the zoning is not approved the Osborn will be at risk of significantly falling behind regional competitors and industry trends.

Alice Modell, 2402 Theall Road, resident of the Osborn for 12 years, asked people to be aware that the Osborn residents are asking for a zoning variance and that all the details for the planning will be handled by the Planning Commission. Regarding traffic problems, it is her opinion that any additional traffic at the corner should not create problems for children going to Osborn School.

Audrey Miller, 5024 Theall Road, Osborn resident, was always surprised and pleased at her fabulous Osborn neighbors. As a former nursery school teacher and director, she felt construction sites provided exciting opportunities for children to learn about plumbing, growing, building, measurements. She noted the intergenerational relationships fostered at the Osborn that benefit the whole community.

Cliff Davis, attorney, 202 Mamaroneck Avenue, White Plains, stated that he represents a large group of families as set forth in his April 4, 2022 submission requesting there be an adjournment of this application until the fall. He recognized the zone change will eventually be approved and he was concerned about it being done right.

Mr. Anderson advised the Council that he is not sure what will eventually come to fruition at property. He thought it was in everybody's best interest to work in the spirit of collaboration.

Mike Buccieri, 57 Water's Edge, started to comment on the condition of the front of the Rye police station. Mayor Cohn told Mr. Buccieri that there would be an opportunity to further address the issue when residents may be heard on other topics later in the meeting.

Daniela Arredondo, 5 Osborn Road, thanked the Council for their time and dedication. The topic was not easy, and the neighbors still have concerns. She appreciated the changes made but thought the buildings were still too tall. This was the crucial stage of planning to find common ground between everyone's wants and needs. She was sure there was a way to come to agreeable terms respectfully and productively.

The Council discussed whether questions from the public should be answered when posed or at a later time. Councilwoman Hurd thought allowing answers during the three minutes would be supportive of community dialogue and less confusing than waiting until the end. The Council agreed to allow dialogue during public comment if there were questions.

Rod Rolette, 202 Stewart Drive, New Rochelle, said he served as chair of the Osborn Board of Trustees and supported the rezoning plans. The Osborn believes in quality of life, respect, and dignity for each individual, and those beliefs guide decisions for the short and long term. He described how the Osborn overcame persistent financial hardships by evolving over the years, and another evolution was needed to continue to improve outstanding services. The Osborn residents share the values of their neighbors, and he expected the plans to benefit all constituents.

Sally Lee, Osborn resident, said she has lived in Rye with her husband for over 50 years. She regularly votes in support of every school budget and bond matter. She wrote letters to the Council. She spoke of the cooperation between the Osborn and the Spry. She hopes the Council can vote now to get to the next step which will provide impetus for concerned citizens to work together.

Simon Smit, 356 Park Avenue, said the issue has gone on for a long time and people on both sides feel very strongly. In the interest of democracy, he suggested putting the decision to a city-wide referendum. If a member of the public cannot put forward a formal motion for a city-wide referendum, he requested a Councilmember make such a motion.

Kathy Grainger-Hobbins, 75 Oakland Beach Avenue, would like to see the Council discuss the Osborn matter in person, especially now that public meetings are again being held in Rye and other towns. She thought a yes vote by the Council would result in further changes to zoning laws or moratoriums. Once the zoning laws are changed there is little the public can do. She encouraged the Osborn administration to sit down with residents to produce a plan that works for everyone before anything is decided.

Sally Luazo, Meadow Place, grew up in Rye and went to Osborn School. She appreciated the measured approach the Council was taking. She agreed that a referendum would be a fair thing to do. She found it ironic that the Council discussed at length the Blind Brook flooding issues and were also considering the zoning text amendment could remove flood-mitigating trees and open spaces at the Osborn. She asked at what point the town decides not to destroy what they have in the name of expansion and luxury. She hoped the Osborn could find ways to stay current without an enormous expansion.

Jose Enrique Francisco, 1 Packard Court, appreciated the Osborn for the services it provides and would like to see it thrive and grow, but felt there were too many concerns not yet discussed, and there should be an extension. There should be a bigger effort to hear the public and make decisions collaboratively with the Osborn. Representatives could be nominated to engage in discussions. He said the Osborn was granted more time and the public should be granted the same courtesy.

Abe Sandberg, Osborn resident of five years, commented that the Osborn was terrific but needed modernization to keep up with other facilities. The Osborn is currently viable but will not be without changes. The Osborn residents are committed to regular engagement with the Rye community. Mr. Sandburg said zoning changes will help the Osborn thrive and he hoped the Council could make it happen.

Leslie Ebers, 138 Osborn Road, said everyone believed they were fighting the good fight for the best reasons. She said the arguments made by several Osborn residents were exactly why Rye residents were concerned; it was not wise to approve rezoning and figure the details out after the fact. Future rezoning requests will be granted because it is within their right. She suggested the Osborn should continue to expand within their current FAR before asking for further expansion. She asked the Council not to approve the rezoning.

Councilwoman Johnson commented that requesting the Osborn build out with current FAR could be problematic for the future regarding change of landscape. Mr. Wrabel added that the current zoning is significantly less restrictive on the Osborn than what is proposed. The current setbacks from Osborn Road are 160 feet and the building setbacks are roughly doubled to 300 feet. Currently the Osborn could build a 75-foot building anywhere within the 160-foot setback. He clarified that the process has been about defining restrictions and planning rationale around the special permit use, not about carte blanche future developments. He maintained the Osborn has addressed all areas of concern through ongoing discussions with the Council, staff, the Planning Board, and the public.

Councilwoman Hurd asked why the Osborn does not develop the property to maximize current FAR before applying for the variance. Mr. Anderson replied it was more of a financing issue; they need to build independent living rental units to fund improvement of amenities. Councilwoman Hurd asked about the net increase of stormwater runoff from development projects. Councilwoman Johnson said any construction project has a stormwater management system that has to be viewed and approved by engineers, the Building Department, and Planning Commission.

Mr. Tung stated there were New York State and City of Rye regulations regarding stormwater, and there ways to manage stormwater onsite before it gets to a point of discharge. Mr. Tung confirmed for Mayor Cohn that the stormwater basins restrict the amount of water that flow into the city's sewer system. Mr. Anderson confirmed for Councilman Nathan that the desired model of 70% independent living and 30% healthcare living would make the Osborn sustainable, and Mr. Wrabel provided more clarity on the 240-foot setback.

Sean Plumer, 111 Osborn Road, supported the postponement of a Council decision on the zoning change until fall. He said active, in-person community dialogue was needed, as Zoom limits the ability to engage. The neighbors are not against the growth and improvement of the Osborn, but they do want a collaborative voice in the expansion of their physical footprint. Zoning changes will be difficult to undo.

Amanda Timchak, 61 Osborn Road, along with other engaged neighbors, submitted a letter on Monday asking for more time to come to a decision about zoning that felt like a win for all. Most neighbors agree that a zoning change is imminent and crucial for the Osborn to succeed, and

she maintained the difference was not so large between what the Osborn wants and what the neighbors want. The green space is an important part of the conversation and it should be collaboratively defined. She encouraged the Council to allow for more planning time, recognizing the need for expeditious engagement.

Stacey Massey, 51 Soundview Avenue, has a son that will spend the next six years at the Osborn School, and she was very opposed to that much construction right next to the elementary school. She wanted to see the Osborn grow and succeed but there are compromises that need to be made. She asked the Council to delay and provide more time to get to the happy middle ground.

Coleman Mackay, 10 Heritage Lane, revisited a topic from the last meeting when the Osborn said there was a wait list for 77 rooms and that there was 97,000 square feet of FAR available for expansion under current zoning. He does not understand the argument that a much bigger FAR is needed to remain competitive. Flooding around the Osborn currently happens despite the stormwater basins, so an additional 450,000 square feet of building will only compound the problem.

Patricia Geoghegan, 155 Osborn Road, valued the opportunity to walk the Osborn property with Mr. Anderson and visualize the proposed sight lines and buildings. In her opinion the stormwater basins are leaky and create flooding. She disagreed with the 50% increase in FAR and did not think the citizens of Rye should absorb that when no other business could get it. The expansion is not reasonable with the flooding problem.

Craig Haines, 2 Coolidge Avenue, asked the Council to consider whether they were representing the views of the community at large who were unanimous in their concerns and objection to the rezoning request. He asked if there was a way to have their concerns factored into the Osborn's proposal. He asked the Council to please vote against the current proposal and asked the Osborn to work with the community over the coming months on a proposal more palatable to the larger community.

Laura Laura, 110 Theodore Fremd Avenue, was concerned about children at the Osborn School being affected by blasting. She hoped for a compromise that met the needs of the Osborn residents and Rye residents. She encouraged postponement of the decision and in-person meetings.

Neil Middleton, 330 Theall Road, accepted the Osborn's need to expand and improve facilities, but he supported having more time for residents and Osborn representatives to find a mutually acceptable proposal. He asked the Council to delay the vote until the fall.

Rosemary Hochberg, 436 Park Avenue, felt that there had not been enough discussions to answer all the neighbors' questions, and she requested additional time for neighborhood representatives to continue the dialogue with the Osborn and City Councilmembers to resolve the ongoing issues of traffic, water, and construction. The biggest problem is once the zoning is approved there will be no further dialogue on what can be changed.

Fraser Varensberg, 155 Osborn Road, no address noted, lives directly opposite the green space, and he echoed the sentiments of his neighbors who asked the Council to postpone a decision until fall. He was concerned about traffic congestion, green space, flooding, blasting, and disruptions to school children. He agreed that community and Osborn representatives should properly discuss the issues before the Council voted.

Robert Van Pelt, 29 Colby Avenue, agreed with most of the commentary from the public. Five- and six-story buildings were a radically different vision of Rye than what was currently present. He was concerned about his children attending Osborn School during construction. The topics at hand were new and confusing to many Rye residents who deserved a chance to be informed. He wanted the Osborn to succeed in a way that makes sense for Rye, but he did not see a level of partnership from the organization.

Mary Ann Haines, 2 Coolidge Avenue, said there was a second petition submitted to the City of Rye earlier by the Frontage Neighbors requesting a response with regards to a three-fourths majority of City Council required to pass a vote. She was informed that she would receive a response in advance of this evening's meeting, but she did not receive a response. Ms. Wilson confirmed there will be a formal written response from the City Clerk but for tonight's purposes a three-quarters vote would be required to adopt the zoning amendment. Ms. Hanes wanted to know if the proposal was compliant with New York State General City Law Sections 25 and 28A regarding the master plan of record. Councilwoman Johnson asked Ms. Wilson if there was anything illegal about the zoning text amendment. Ms. Wilson replied that it was not illegal, and the issues surrounding the City's master plan are addressed in the declaration resolution.

Elaine Lerner, 59 Franklin Avenue, said that no one is against the Osborn, they just do not support the zoning. It was much too soon, much too fast, and much too vague of a plan. The plan should be more specific. Mr. Wrabel and Mr. Anderson confirmed for Ms. Lerner that the language of the passive recreation includes walking paths and gardening with the intent to limit it to quiet enjoyment uses.

Katie Sibson, 125 Osborn, first requested that the Council consider an extension before deciding. Many neighbors have come together and would like to present to Mr. Anderson and his team something that works well for all parties involved so they can support the initiative. Second, she requested that the Council consider voting no today because the current proposal is an outsized request and does not have community support. She fully supported the Osborn as a critical part of the community, but there should be an opportunity to work better together.

Julie Lovallo, 27 Hughes Avenue, asked that the Council postpone the vote until the fall. She wants the Osborn to succeed and thrive but has concerns. She was confident a middle ground can be found.

Kate Velasquez, 50 Hill Street, agreed with her neighbors that more time was needed to consider the proposal.

Daniela Arredondo spoke again and stated that the illustrative plan was meaningful for the public so they can see where buildings can be built. She appreciated the removal of the cottages.

She felt an agreement could be reached. This is the first time neighbors have requested the Council extend their decision time. In-person meetings are important and relevant to the process. This was a big change that needed to feel right, and for it to feel right there needed to be more collaboration before a decision.

Lindsay Lorraine, 68 Allendale Drive, supported the community members who requested a delayed vote. The public is finally getting some clarity through meaningful discussion. She raised the point of the Osborn's approximately 90,000 square feet of unused expansion room. She was also concerned about flooding, pedestrian safety, and traffic. She pointed out the completion of the St. Regis which provides housing to residents over age 65 and how that may factor into what the proposal means for the town.

Daire Browne, 129 Grand View Avenue, encouraged Mr. Henderson and the Osborn team to spend three or four more months trying to achieve the compromise that everyone wanted. If a solution could not be reached after several months, the Council could vote knowing they fully responded to the concerns of the community. He said voting right now was a poor decision that would create a standard for all of Rye for years to come.

Sabrina Tavi, 9 Osborn Road, lives across the street from the Osborn. She supports the Osborn and wants to see it succeed. The beautiful property was part of the reason her family chose the house they did. She was frustrated with the City of Rye for not addressing the request from herself and others for a crosswalk at Osborn School. Current pedestrian safety matters have not been addressed, and the rezoning would make matters worse.

Emily Powers, 23 Coolidge Avenue, agreed that no one is opposed to the Osborn. If the Council says yes to the rezoning plan it does not make the community disappear. A collaborative solution with community support is needed, and it would be a major accomplishment if the Council could resolve the issue collaboratively.

Sue Drouin, 57 Morehead Drive, also requested that the Council delay a zoning vote until the fall so the Osborn and community members have a chance to meet. This was too important to rush, and the Osborn did not seem to understand what the community wanted. An opportunity to meet in a collaborative fashion has never been offered until now, and the neighbors are asking the Osborn to come to the table. More work is needed on the rezoning proposal to get it right for everyone. Ms. Drouin stated the discretionary zoning change will fundamentally alter the neighborhood forever.

Coleman Mackay spoke again in agreement with those suggesting a delayed vote. More time and more dialogue would be a good idea. If there is a vote at this meeting, he asked the Council to vote no.

Leslie Ebers spoke again to share her appreciation for the format of the meeting. She appreciated the discussion after points were raised to elicit understanding. The whole thing is confusing to many people and the changes to the proposal are difficult to wade through. She encouraged the Council to not vote at the meeting, but to allow the conversation to continue to shed additional light and have more people comfortable with what will be voted on eventually.

Dan Chorost, 9 Osborn Road, was one of five neighbors that wrote a letter in February 2021 that should be in the record. The letter referred to the 1985 master plan. The point of the master plan is to talk about what everyone needs and wants. He requested more time for collaboration and conversation.

Elaine Lerner spoke again to say the Osborn should start with what they have, not what they wish.

Amanda Timchak spoke again to share what happened at a recent neighbors meeting that culminated in a letter for neighbors to sign, and the letter was sent on Monday with 141 signatures, evidence that neighbors can come together and get to a singular thought about the right outcome. The groundwork had been set for neighbors coming together in agreement. Given a little more time, she believed the Osborn and its neighbors could get to a place that feels good for everyone.

Patricia Geoghagen spoke again to note that the 141 signatures Ms. Timchek mentioned represent people who have children at the Osborn School. There are other neighbors like Ms. Giggen who do not have children but would gladly join the neighbors' mission to communicate thoroughly and establish reasonable concessions.

Susan Yu, 3 Osborn Road, expressed similar comments of her neighbors and concerned citizens. She felt there was still too much confusion among Rye residents, as evidenced by tonight's discussion. She requested the Council extend the discussion between the community and the Osborn and note vote on the issue yet.

Ravi Mehta, 25 Sonn Drive, echoed comments made by fellow residents that live around the Osborn and the school. He was extremely concerned about the disruption to the elementary school and asked the Council to put themselves in the parents' shoes. The Osborn was an important part of the community and had an important relationship with the elementary school and the broader community. He requested the Council take advantage of the opportunity to listen to all the voices and grant the extension the public has been asking for.

Mayor Cohn asked the Osborn representatives to provide comment on issues raised by the public, starting with how blasting may affect the students at Osborn School. Mr. Anderson stated the reasons for the heights on the buildings was to make sure they do not have to go deep into the ground with blasting. If anything had to be done that would create loud noise, it would first be discussed with the school, and blasting would occur when school is not in session, when possible.

Mayor Cohn asked Mr. Anderson to respond to the repeated invitation to engage more with the public. Mr. Anderson appreciated everything said tonight and over the course of the last three and a half years. He felt the Osborn had acted in good faith throughout the process and had been upfront about their process, including their website that provides access to information presented. Mr. Anderson has spoken with members of the public in person and on the phone and has conducted walking tours for interested neighbors. He maintained that the Osborn prepared a well-considered and well-balanced piece of legislation that offered future protection. The bigger ask

three years ago was carved down after City Council and Planning Commission feedback, and they will continue to listen and change the proposal if necessary.

Councilman Nathan appreciated all the outreach and communication by the Osborn over several years, and the transparency with which the Osborn representatives have presented the issue. He acknowledged their responsiveness and clarity about what they can and cannot do, and the time spent with the Council and residents of Rye. He asked Mr. Anderson to support a motion to adjourn the issue until the July meeting to allow time for a meeting with the Osborn and a core group of residents to discuss specific topics relevant to zoning. Mr. Anderson said he felt strongly that issues had been heard, adjustments have been made, and it was time to move forward with the well-balanced and protective plan. He made assurances that public engagement would continue after an affirmative vote for the rezoning.

Mr. Wrabel supported the notion that the proposal drafts had been shared with the community as they became available, and changes made ultimately restricted the Osborn's future development potential. Councilman Nathan thought the public need more time to review the proposal considering the quick and recent timeline of available information.

Councilwoman Souza agreed with Mr. Wrabel that the plan had been posted and was not shared last-minute. Councilwoman Souza asked if a motion was needed to close the public hearing. Mayor Cohn asked for such a motion, and Councilwoman Souza made the motion. Councilman Nathan followed quickly with a motion to extend the public hearing until July 13th to allow time for a meeting between the Osborn and the public.

Councilwoman Souza stated that the vote was for a zoning text amendment, not the illustration of the proposed changes. The specifics of the plan were still negotiable after the fact if the zoning text amendment was approved. The issue had become divisive, and she was not convinced more time would make it nicer. Councilman Nathan noted the lack of hostility at tonight's meeting, and Mayor Cohn felt it was a sea change from the terrific hostility directed at the Osborn in earlier hearings.

Mayor Cohn agreed with Councilwoman Souza that the illustration had become a distraction to the public, but the Osborn continued to make changes in the plan reflective of the City's requests. Mayor Cohn acknowledged the public's desire to be heard but felt it was becoming unfair to the Osborn after three years of coming before the Council. Councilman Nathan responded that the Council had been given several adjournments because the plan was not ready, and Mayor Cohn replied those adjournments were necessary to implement the requested changes. Mayor Cohn thought the Council had gone far beyond what was typically asked for in a zoning amendment process. Mr. Wrabel stated that the Osborn wanted to present in March but were adjourned by the Council, and later adjourned in April to update the proposal after a traffic study commenced.

Councilman Nathan said he would like to support the Osborn's wishes, but first the cohort of concerned, engaged members of the public deserved another meeting with the Osborn. Councilwoman Johnson countered that Mr. Anderson had acquiesced on a number of points raised by the public.

Two motions were put forth; first, Councilwoman Souza made a motion to close the public hearing. Councilman Nathan made a second motion to extend the public hearing to the July 2022 meeting.

Mayor Cohn summarized the two motions made: one to close the public hearing, and one to extend it until July. Councilwoman Johnson seconded the motion to close the public hearing. Corporation Counsel Wilson stated that given the context of the motion and the prior discussion, she recommended a roll call for closing the public hearing.

ROLL CALL TO CLOSE THE PUBLIC HEARING

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Souza

Nays: Councilmembers Nathan, Stacks

Absent: None

Ms. Wilson summarized the resolution on the table to approve the SEQRA Negative Declaration and the zoning text amendment. The resolution requires a three-quarters vote of six in favor to pass.

Councilman Nathan went through the DEC form section and City Planner Miller answered his questions about the rationale behind why certain boxes were checked. Councilman Nathan was concerned about changes to the Osborn property that would be considered "stark contrast" or have "moderate-to-high" impact. He believed the crux of the issue for concerned neighbors was whether the proposed developments were consistent with existing community character. Councilwoman Souza said none of the projects would happen without a review as they become relevant. City Planner Miller summarized that the proposed zoning text amendment with all of its changes does not appear to have a significant adverse impact on the environmental impact areas.

Councilman Nathan requested more time to discuss the motion. Mayor Cohn commented that sufficient discussion had occurred.

Councilman Nathan commented that in going through the forms City Planner Miller identified a number of items where answers chosen may not be entirely correct and could become issues of greater concern in the future. He did not want the Osborn to go down the EIS path unnecessarily. He supported the several hundred residents who had questions about these subjective matters. He would like to vote yes but he was not comfortable voting on the issue at the current meeting.

Councilwoman Johnson made a motion, seconded by Mayor Cohn, to adopt the following to SEQRA Negative Declaration and the zoning text amendment. Mayor Cohn asked for a vote, then clarified for the Council that one vote covered both items. The resolution and local law motioned to be adopted are as follows:

**RESOLUTION OF THE RYE CITY COUNCIL TO ADOPT A NEGATIVE
DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT
(SEQRA) AND ADOPT THE PROPOSED ZONING TEXT AMENDMENT AMENDING**

THE R-2 ZONING DISTRICT TO ADD A NEW USE FOR SENIOR LIVING FACILITIES

WHEREAS, The Miriam Osborn Memorial Home Association (the “Osborn”) submitted a petition dated November 18, 2018 to amend Section 197-86 of the City of Rye Zoning Code to add a new Section 15 entitled “R-2 Senior Living Facilities” (“SLF”) to Table A, Column 2 (the “Zoning Text Amendment”); and

WHEREAS, the Zoning Text Amendment would allow for Senior Living Facilities on lots having a minimum of 50 contiguous acres with numerous other bulk and density restrictions including, but not limited to, minimum setbacks, height restrictions, and lot coverage;

WHEREAS, the proposed action applies to all the R-2 Districts in the City, which are located throughout the City; and

WHEREAS, the Osborn is the only property owner currently owning 50 contiguous acres in the R-2 District; and

WHEREAS, the Osborn presented a proposed Zoning Text Amendment in November 2018 to the City Council and the City Council referred the matter to the Planning Commission for its advisory review and recommendation; and

WHEREAS, the Osborn’s property, 101 Theall Road, is known on the Rye City Tax Map as Parcel 146-13, Block 1, Lot 8, and is located in an R-2 District; and

WHEREAS the Zoning Text Amendment includes proposed text amendments dated November 28, 2018 that were subsequently re-submitted and/or revised on March 11, 2019, October 8, 2019, November 12, 2019, December 3, 2019, January 22, 2020, March 11, 2020, and February 19, 2021, and June 3, 2022; and

WHEREAS the Zoning Text Amendment includes Part 1 of the Environmental Assessment From (EAF) dated November 28, 2018 which was subsequently re-submitted and/or revised on March 11, 2019, March 11, 2020, April 20, 2020, June 1, 2022, and June 3, 2022; and

WHEREAS, on December 19, 2018, the Zoning Text Amendment was discussed and considered in a meeting of the City Council; and

WHEREAS, starting in the winter of 2018/2019 and throughout the various zoning text amendments, the City Council participated in numerous site walks of the Osborn’s property and reviewed the surrounding areas; and

WHEREAS, on February 27, 2019, the City Council referred the Zoning Text Amendment to the Planning Commission for review and comment; and

WHEREAS, on March 26, 2019, May 7, 2019, October 15, 2019, October 29, 2019, November 19, 2019, and December 10, 2019 the Zoning Text Amendment was considered and discussed in meetings of the Planning Commission; and

WHEREAS, on March 30, 2019, the Planning Commission conducted a site walk of the Osborn's property and reviewed the surrounding areas; and

WHEREAS, on October 8, 2019, the Osborn submitted to the Planning Commission revisions to the proposed text amendments, supporting materials, and a planning statement prepared by Divney Tung Schwalbe; and

WHEREAS, on November 12, 2019, the Osborn further revised its submission to the Planning Commission and included supporting materials; and

WHEREAS, on December 10, 2019, the Zoning Text Amendment was considered in a meeting of the Planning Commission and the Planning Commission approved its report and recommendation to the City Council supporting text changes with respect to the proposed use, recognizing that proposed bulk and dimensional standards would help advance the Osborn's needs in a competitive market, and recommending a revised zoning text amendment with modified standards for building height, setback, coverage, and buffer; and

WHEREAS, on January 22, 2020, the Osborn submitted to the City Council revisions to the proposed text amendments based upon discussions with the Planning Commission; and

WHEREAS, on March 11, 2020, the Osborn submitted to the City Council an updated Zoning Text Amendment including revisions to the proposed text amendments, an updated Part 1 EAF, a residential property value analysis prepared by DTS provident, and other supporting materials; and

WHEREAS, on April 15, 2020, the revised Zoning Text Amendment and related SEQRA matters were discussed and considered in a meeting of the City Council; and

WHEREAS, on April 20, 2020, Petitioner submitted a revised Part 1 of the Environmental Assessment Form (EAF); and

WHEREAS, on April 27, 2020, Rye City Planner Christian K. Miller, submitted to the City Council a draft Part 2 EAF which identified no moderate or large impacts associated with the petition; and

WHEREAS, on April 29, 2020, the City Council further discussed the Zoning Text Amendment and the City Council set a public hearing for it May 13, 2020 meeting; and

WHEREAS, in May 2020 the Zoning Text Amendment was referred by Rye City Planner Christian K. Miller to the Westchester County Planning Board pursuant to the requirements of the General Municipal Law and the Westchester County Administrative Code; and

WHEREAS, on May 8, 2020, the Westchester County Planning Board provided a letter offering comments relating only to Affirmatively Furthering Fair Housing (AFFH) units and parking requirements; and

WHEREAS, on May 13, 2020, a duly noticed public hearing was held related to the Zoning Text Amendment and all members of the public wishing to be heard were given the opportunity to be heard, the City Council asked the Osborn to come to the next session prepared to address the comments that were heard, and the public hearing was continued; and

WHEREAS the public hearing and SEQRA discussion was continued to the City Council's May 27, 2020 meeting, where it was then adjourned to the City Council's June 10, 2020, July 15, 2020, September 16, 2020, and October 7, 2020 meetings; and

WHEREAS, on September 28, 2020, Petitioner submitted to the City Council responses to public comments; and

WHEREAS, on October 7, 2020, the petition was discussed and considered in a meeting of the City Council and the public hearing and SEQRA discussion was continued to the City Council's October 21, 2020 meeting; and

WHEREAS, on October 21, 2020, a duly noticed public hearing was held and all those wishing to be heard were given the opportunity to be heard and the public hearing was continued; and

WHEREAS the public hearing and SEQRA discussion was continued to the City Council's November 4, 2020 meeting, where it was then adjourned to the City Council's December 2, 2020, January 6, 2021 January 20, 2021, February 3, 2021, and February 24, 2021 meetings; and

WHEREAS, on February 19, 2021, the Osborn submitted to the City Council revisions to the proposed text amendments, a traffic evaluation prepared by Hardesty & Hanover, LLC, and a sewer report prepared by Divney Tung Schwalbe and QAV Technologies, and other supporting materials in response to comments made by neighbors, the City Council, the Planning Commission, and City Staff; and

WHEREAS, on February 24, 2021, a duly noticed public hearing was held and all members of the public wishing to be heard were given the opportunity to be heard and the public hearing was continued; and

WHEREAS, on March 10, 2021, a duly noticed public hearing was held and all members of the public wishing to be heard were given the opportunity to be heard and the public hearing was continued; and

WHEREAS, the public hearing was continued to the City Council's March 24, 2021 meeting, where it was then adjourned to the City Council's April 7, 2021, April 21, 2021, May 5, 2021, June 9, 2021, July 14, 2021, July 22, 2021, August 11, 2021, September 22, 2021, October

20, 2021, November 3, 2021, November 17, 2021, December 1, 2021, January 19, 2022, March 16, 2022, April 6, 2022, and May 25, 2022 meetings; and

WHEREAS, on March 9, 2022, the Osborn submitted to the City Council responses to public comments, an Illustrative Site Diagram prepared by RLPS Architects, a concept planting plan prepared by Towers Golde, LLC, and other supporting materials; and

WHEREAS, on May 18, 2022, the Osborn submitted to the City Council an updated traffic study prepared by Hardesty & Hanover, LLC to consider the post-pandemic environment; and

WHEREAS, on May 25, 2022, a duly noticed public hearing was held before the City Council related to the Zoning Text Amendment and all members of the public wishing to be heard were given the opportunity to be heard; and

WHEREAS, on, June 1, 2022, the Osborn submitted a revised Part 1 of the EAF; and

WHEREAS, on, June 3, 2022, the Osborn submitted to the City Council revisions to the proposed text amendments, a revised Illustrative Site Diagram prepared by RLPS Architects, a Zoning Comparison Table prepared by DTS Provident Design Engineering, LLP, an updated Part 1 EAF, and a Part 2 EAF; and

WHEREAS, on June 3, 2022, the Zoning Text Amendment was referred again by Rye City Planner Christian K. Miller to the Westchester County Planning Board; and

WHEREAS, the Westchester County Planning Board in a June 10, 2022 letter offered comments relating only to Affirmatively Furthering Fair Housing (AFFH) units and parking requirements; and

WHEREAS, on June 15, 2022, the Osborn updated it June 3, 2022 submission and submitted a zoning diagram that clarified what each line represents as far as zoning setbacks; and

WHEREAS, after giving the public an opportunity to be heard and reviewing the written submissions, the City Council closed the public hearing on June 15, 2022; and

WHEREAS, under SEQRA, the proposed Zoning Text Amendment is classified as a Type I action pursuant to Section 617 of the regulations of SEQRA; and

WHEREAS, the City Council is the lead agency as this action is a legislative action of the City of Rye and the City Council is the only agency with jurisdiction by law to fund, approve, or directly undertake this action; and

WHEREAS, the City Council has completed a thorough review of the identified areas on the Environmental Assessment Form Parts I and II (along with the attachment dated June 10, 2022), which are incorporated herein by reference, and the City Council hereby adopts the findings, conclusions and rationale contained with Parts II and attachment of the EAF; and

WHEREAS, the Osborn prepared numerous studies to assist the City Council in reviewing any environmental impacts, including a stormwater management analysis, planting plan, illustrative simulations, and traffic evaluations; and

WHEREAS, there are no moderate to large impacts identified; and

WHEREAS, to acknowledge and further its contributions to the community and continuing a long term relationship, the Osborn has committed money toward a study of potential traffic and pedestrian improvements, as well as contributions toward Rye EMS and Rye Recreation; and

WHEREAS, the proposed action does not involve any specific project to change the existing use of buildings or properties in the R-2 District; and

WHEREAS, any site specific changes will be considered by the Planning Commission under site plan review.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Rye as follows:

1. The City Council, as Lead Agency, in a coordinated review (Planning Commission, Westchester County – interested agencies), has reviewed and considered the entire record of the Zoning Text Amendment, including all material submitted by or on behalf of the Applicant, the EAF, the Planning Commission recommendation, and the written and oral public comments made during the public hearings; and
2. The City Council has considered the potential impacts of the Proposed Action in light of the criteria set forth in the SEQRA regulations (6 NYCRR Section 617.7(c)) and the representations made by the Osborn; and
3. Having thoroughly reviewed the record and determined that the Proposed Action will not have significant adverse environmental impacts, the City Council hereby issues a Negative Declaration under SEQRA; and
4. The City Council hereby adopts the Zoning Text Amendment as presented at the City Council meeting on June 15, 2022 to amend the R-2 Zoning District; and

BE IT FURTHER RESOLVED, that the City Council of the City of Rye authorizes Corporation Counsel to undertake the necessary steps to nullify the applicable 1993 Covenants and Restrictions that apply to the petitioner's property.

On a motion by Councilperson Johnson, seconded by Mayor Cohn, the foregoing Resolution was adopted on a vote of 6 ayes and 1 nays (roll call below). As such, the following local law amending the zoning text was adopted:

**CITY COUNCIL
CITY OF RYE, NEW YORK**

LOCAL LAW NO. 6 2022

**A LOCAL LAW TO REVISE THE ZONING ORDINANCE
OF THE CITY OF RYE**

Be it enacted by the City Council of the City of Rye as follows:

Section One. Section 197-86 of the City of Rye Zoning Ordinance shall be amended by adding a new section (15) entitled “R-2 Senior Living Facilities” to Table A, Column 2, under the heading “R-1, R-2, R-3, R-4, R-5, R-6, RS and RT Districts”, which shall state as follows:

(15) R-2 Senior Living Facilities. In the R-2 District, an age restricted, multi-family residential facility in a campus setting providing a variety of housing types, including, but not limited to: independent living units, assisted living facilities, ambulatory services, and domiciliary care facilities, with healthcare support, including but not limited to availability of accessible units and assistance for residents with activities of daily living, and including other appropriate ancillary and accessory uses typically found in senior residential communities including, but not limited to, communal space, associated office space, equipment storage, residences for staff, support facilities, food preparation and service facilities, provided that:

- (a) Residents of R-2 Senior Living Facilities shall be limited to: (i) a single person 55 years of age or older; (ii) two or three persons, all of whom are 55 years of age or older; (iii) a married couple, live-in companion, or partner, one of which is 55 years of age or older; (iv) the surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; and (v) one adult 18 years of age or older residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.

[1] Notwithstanding the foregoing, up to four (4) dwelling units within the community may be set aside to be occupied by a superintendent, building manager, or other staff member and their family, to which the limitations on occupancy set forth above shall not apply.

[2] Persons under the age of 55 not specifically permitted to be occupants shall not be permitted to be permanent residents of dwelling units. For the purposes of this section, a “permanent resident” shall mean any person who resides within the dwelling for more than three consecutive weeks or in excess of 30 days in any calendar year, or has listed the residence as an abode for any purpose whatsoever, including, but not limited to, enrollment in public or private schools. Temporary occupancy by guests of families shall be permitted, provided that such occupancy does not exceed a total of 30 days in any calendar year.

[3] The limitations on occupancy shall be included in the marketing materials for the development as well as within the rules and regulations or terms of any leases, bylaws or covenants and restrictions for the development. Violations of the limitations on occupancy shall be enforceable by the City of Rye Building Inspector against the owner or lessee or the agent of any of them and shall be

punishable by a fine of \$250 per day or by imprisonment not exceeding 15 days, or by both such fine and imprisonment. Exceptions to these regulations shall be granted if any limitations are determined to be in violation of any state or federal law.

[4] The Planning Commission shall have the right to require that the owner execute agreements and covenants as it may deem to be required during any site plan approval process as it may reasonably deem to be required to ensure compliance with the stated intent of this section. Said agreements or covenants shall be recorded in the office of the Westchester County Clerk and constitute a covenant running with the land. Such covenant or agreement may be modified or released only as set forth in said covenant or agreement or by the City Council.

- (b) The site for an R-2 Senior Living Facility shall have a minimum of 50 contiguous acres.
- (c) The floor area ratio shall not exceed 0.43.
- (d) Lot building coverage shall not exceed 15% and total impervious coverage shall not exceed 33%.
- (e) Building height shall not exceed four (4) stories or 55 feet. Where proposed buildings are set back at least 240 feet from the all property lines and wholly located within an area of said setback that can contain a horizontal square with 200-foot sides, the permitted maximum building height may be increased to five (5) stories and 65 feet. No building within 400 feet of Osborn Road shall exceed three (3) stories or 45 feet in height.
- (f) There shall be a minimum yard requirement of 160 feet for front yards and a minimum yard requirement of 160 feet for side and rear yards.

[1] Where an R-2 Senior Living Facility adjoins or is located across the street from a single-family residence or school, the required yard shall be planted and maintained with appropriate landscaping in keeping with the existing setting so as to provide effective visual screening, and shall contain no buildings or storage. Nothing in this Chapter shall prohibit the placement of stormwater management facilities, sidewalks, gardening and passive recreation features, and/or access drives within the required minimum yard.

[2] The minimum yard requirement from Osborn Road shall be 300 feet.

[3] Where an R-2 Senior Living facility adjoins or is located across the street from a use other than a single-family residence, Senior Citizens Apartment (RA-5 District), or school, required yard setbacks may be reduced to no less than 100 feet, provided that the maximum permitted area of the encroachment of the structure into this reduced setback shall be no more than 30% of the total area between each yard line and the standard 160-foot setback. Notwithstanding the foregoing, for all new buildings and structures, a minimum setback of 160 feet shall be maintained from Old Boston Post Road.

[4] The provisions of § 197-52 shall not apply to R-2 Senior Living Facilities.

- (g) Notwithstanding the provisions of the foregoing paragraph (f), new parking areas and roadways may be located in required yards, but in no case shall a parking area or non-access roadway be located closer than 40 feet to a property line, 100 feet to a property line bordering Boston Post Road or Old Post Road, or 240 feet to a property line bordering Osborn Road. Any parking areas facing Boston Post Road, Old Post Road, or Osborn Road shall be screened from those roadways with evergreen plantings.
- (h) There shall be a minimum distance of 20 feet between all buildings. Notwithstanding the foregoing, buildings may be connected by exterior paved pathways or interior corridors. The provisions of § 197-70 shall not apply to R-2 Senior Living Facilities.
- (i) For independent living units in R-2 Senior Living Facilities, the minimum amount of residential floor area in each unit shall be 750 square feet for one bedroom units, 900 square feet for two bedroom units, and 1,100 square feet for three bedroom units. For assisted living units, the minimal amount of residential floor area shall be 200 square feet. The provisions of § 197-44.B shall not apply to R-2 Senior Living Facilities.
- (j) On any lot used for an R-2 Senior Living Facility, at least 60% of the property shall be preserved as open space. The provisions of § 197-68 shall not apply to R-2 Senior Living Facilities.
- (k) Off-street parking for R-2 Senior Living Facilities shall be provided as follows:
 - [1] For independent living units: 1.0 spaces per dwelling unit.
 - [2] For assisted living, skilled nursing, nursing home, and memory care facilities: 0.25 spaces per bed.
- (l) The provisions of Chapter 197, Attachment 1, entitled “Table A: Residence Districts” shall not apply to R-2 Senior Living Facilities.
- (m) The provisions of § 197-8.A and C shall not apply to R-2 Senior Living Facilities.
- (n) Notwithstanding any of the foregoing, any building, structure or use existing on the effective date of this section which does not conform to the provisions of this section may be continued subject to the requirements of Article III of this chapter.

Section Two. If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

Section Three. This Local Law shall take effect immediately upon filing with the Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Souza, Stacks
Nays: Councilman Nathan
Absent: None

8. Open the public hearing for a waiver request from the existing rock removal moratorium from Fletcher Development.

Leo Napior, Harfenist Kraut & Perlstein, LLP, attorney, and Joe Warren appeared on behalf of Fletcher Development. They submitted a fairly detailed letter to the Council in support of the waiver request. Mr. Napior recapped that the applicants purchased the property in December of 2020 and started designing their dream home. They went through a fairly lengthy plan review process and received a building permit. The house is entirely zoning compliant and received approval the first time it was heard at the Board of Architectural Review. A building permit was received immediately prior to the moratorium going into effect. Unfortunately, the applicant did not have local counsel at the time and were not aware of the moratorium.

Mr. Napior maintained that due to the extent of rock removal on the site, it was not feasible to complete in 15 calendar days. The applicant requested permission to proceed under the prior ordinance, or to be able to blast onsite in an expedited timeframe. There is concern about being stalled indefinitely under the moratorium. The applicants continue to pay a lease, mortgage, and have paid the \$40,000 for a building permit fee. The intent of the construction schedule was to complete the residence in time for their oldest child to shift into the Rye school district in the fall of 2023.

Mayor Cohn welcomed the applicant family to Rye and apologized on behalf of the Council that the family was in this position, but was a moratorium to protect. Concerned neighbors of the applicant have asked the Council to protect the moratorium, which was publicly announced March 16, 2022, after the public hearing. During the hearing it was determined that delay in construction was not an adequate basis for a waiver. Mayor Cohn asked why the issues presented by the applicant are not simply functions of delay in construction. The City was attempting to complete a new rock removal law within the six-month moratorium, and three months had already gone by.

Mr. Napior responded that he did not believe the intent of the moratorium was to sweep in the unknowing individuals who made the investment. The moratorium went into effect three days after the applicant received the building permit and started to work. The site was stripped of all vegetation and there was a large hole in the ground that required dewatering. The property is an eyesore, and the construction delay affects their child's schooling and their housing options. Mr. Napior maintained that the moratorium waiver was included for precisely this type of applicant. The applicant did not yet live in Rye, their contractors were not local, and they lacked local counsel, making it very difficult for them to be informed about the moratorium.

Councilman Henderson stated that the moratorium allows 15 days for rock chipping, then asked if the applicant had determined how much time they need. Mr. Napior replied that more exploration was needed because drilling was excluded under the original ordinance and counted as part of the 15 days. Contractors at the site excavated until they hit ledge rock and they estimated

approximately 750-800 cubic yards of rock will need to be removed. Mr. Napior said until they start hammering it was difficult to know exactly how much time was needed, but they are confident they could complete the activity within 38 calendar-day window.

Mayor Cohn asked City Planner Miller to clarify his understanding that drilling to establish the quality and quantity of rock was not covered by the moratorium. City Planner Miller stated that it has been interpreted as exploratory for the purpose of understanding the suitability of the soil for footing or drainage measures, and typically that involves drilling until you hit bed rock, which is why is not considered for drilling rock. The moratorium speaks to drilling and boring, but to simply drill into rock for whatever purpose would be subject to the moratorium.

Councilwoman Souza did not understand why boring was needed if they already estimated the amount of rock to remove. Mayor Cohn agreed, stating even in the absence of a moratorium the Council does not know if it fits within the preexisting law. Mr. Napior responded that given the extent of the rock removal, the contractor is confident that even if they encounter hard rock that they can get it out in 25-28 working days. Councilwoman Souza thought that 25 days of rock removal would be hard on the neighbors.

Councilwoman Souza made a motion to open a public hearing on the matter, and Councilwoman Hurd seconded the motion. The Council agreed to hear comments from the public.

Ms. Arrendondo stated that she wished Mr. Napior and Mr. Warren all the best. Rock removal has been a big issue for the City of Rye. She thanked Councilman Nathan for being a respectful advocate for the public.

With no further public comments, Councilwoman Hurd made a motion to close the public hearing. Councilman Nathan stated he was hesitant to close without hearing from impacted neighbors. Councilwoman Hurd and Mayor Cohn confirmed letters had been received in objection to granting the waiver. Ms. Wilson stated that the Council had 30 days to conduct a public hearing, and a decision had to be made within 10 days of closing the public hearing. If the Council decided more information is needed for deliberations, they could leave it open, but they would need a special session. Councilwoman Hurd did not believe there was more information that would be helpful, and while the situation was unfortunate, the appeal did not raise the exigent circumstances that were requiring for the exceptions to the moratorium.

Councilwoman Hurd made a motion to deny the appeal. Mr. Napior asked the Council if his client could speak and provide further insight into the situation. Mayor Cohn said the information had been read and there was a motion pending. Councilwoman Hurd said she was fine with the applicant speaking since he waited so long to be heard. Considering the late hour, Mayor Cohn asked the applicant to be succinct.

Thomas Odana, applicant, spoke on behalf of his wife Michelle and their three children, who were all very much looking forward to enjoying their lives in their new home in Rye. He reiterated that his family was unaware of the changes and because of that missed an opportunity to obtain approval for an important part of the building process. He requested leniency on the

matter. With the current timeline it looked like his oldest daughter will not start Kindergarten in Rye public schools. He thanked the Council for their time.

Councilman Nathan wondered if would be beneficial to do exploratory drilling before deciding. Councilwoman Souza asked if there was an average throughput to estimate how long it would take to remove 750 cubic feet of rock. City Planner Miller answered that it varied, and Councilwoman Johnson added it was a matter of how hard the rock was. Mayor Cohn said the applicants could drill now and consume their 15-day allotment, but to the extent that drilling might show something, they were free to do that. Councilwoman Souza would like to see the result of the exploratory drilling with an estimate for how long it would take to remove before making the decision, and Councilwoman Johnson supported the idea. Councilman Henderson suggested the exploratory digging could determine if the rock could be removed in 15 days, and if not, the family could apply for the waiver.

Mr. Napior said there were costs associated with mobilizing the site, and from past experience he thought neighbors might find it more offensive for the blasting to come in waves as opposed to being in and out in the span of a month. Councilwoman Souza pointed out the neighbors would not want drilling for 28 or 38 days. Mr. Napior maintained it would bother the neighbors more to have 10 consecutive days of drilling every month. Councilwoman Souza reminded the Council that when the moratorium was passed it was a clear signal to the community that large pieces of land that sit on rock should not be developed.

Councilwoman Hurd noted the property plan included a house and a pool, then asked if the applicant intended to do all rock chipping immediately. Mr. Napior and Mr. Warren, the developer, explained that the house foundation was the major issue, the pool did not need as deep of a hole. Mr. Napior reminded the Council that the applicants had gone through the permit process properly and were the victims of bad timing, which differentiated them from other applicants requesting a waiver.

Councilman Henderson asked the applicant what work needed to be done to better understand how much time was needed to chip or drill. Mr. Warren replied that there were three or four locations of concern about extremely dense rock, and they would need to drill and then consult with geologic experts to determine what it would take to remove the rock. If the applicant were granted three to five days to do boring tests, they could better understand the density of the rock and come back with a better plan. Councilman Nathan asked Mr. Warren if the applicant would redesign the foundation if was determined that rock removal would take the full 38 days. Mr. Warren replied it was not his decision to make, but that he considered himself an aggressive builder who also wants the project done quickly.

Mayor Cohn concluded that the applicant needed no special privilege to complete 15 days of exploratory work and return to the Council. Mr. Napior requested the exploratory work not count towards the 15 days. Mr. Warren considered what it would take to get a crew mobilized and concluded it would be beneficial to have several days to explore before the 15-day digging period. While Councilmembers Souza and Nathan were not interested in giving the applicant more than 15 days to explore, Councilman Henderson supported granting an extra three to five days, stating that the moratorium was designed to encourage thorough site planning by developers.

Councilwoman Hurd thought the applicant was a good candidate for blasting which may be codified in the fall, and that would be a very quick way of getting rid of the rock.

Councilman Nathan suggested the 15 days could be bifurcated. Mayor Cohn was hesitant about that idea because if the applicant discovers the rock removal required more than 15 days, they would be back asking for more time. Councilman Henderson reiterated the developer would need to be organized to do it under 15 days and some testing should be done first. Mr. Warren requested they be allowed one day to explore with the drills in the several areas of greatest concern, then get back to the Council with the results.

Councilwoman Souza proposed granting the applicant a one-day exception to do exploratory drilling. Mr. Warren assured Councilwoman Hurd that the rock chipping would be between 9 a.m. to 3:30 p.m. Mayor Cohn summarized the pending motion for one day of exploratory drilling with one hammer and one drill. Councilman Stacks seconded the motion. The Council unanimously granted the motion.

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

Due to the time (1:17 a.m.) the Council adjourned this item.

10. Consideration to refer to the BAR an application from DISH Wireless, LLC to modify an existing support structure for the installation of wireless communication equipment to support the 5G connectivity needs of residents, businesses, and first responders.

Maximillian Mahalek, attorney on behalf of DISH Wireless, appeared at the meeting to support the request for a referral to the Board of Architectural Review. The application was to modify an existing facility at 66 Milton Road, to add three antennas, six remote radio units, three protective devices, and several cables. Only the antennas and the equipment box would be on the exterior of the structure and painted to match the building; the remainder would be in existing conduits or cupola. The facility is eligible for the request because it is an existing structure, and they are not asking to expand the height nor the footprint of the building.

Mr. Mahalek shared a diagram of what the changes would look like. He clarified for Mayor Cohn that this was to provide 5G cell phone service to enhance connectivity. He was not able to answer Mayor Cohn's question about bandwidth but stated he would return at following meetings with an answer. Mayor Cohn asked if it was the only installation planned in Rye, and Mr. Mahalek confirmed it was, as far as he was aware. He confirmed for Mayor Cohn that DISH had the appropriate authorizations to be in front of the Council, and he confirmed for Councilman Nathan that the upgrades would service the area, not just the building.

Councilwoman Johnson made a motion, seconded by Councilwoman Hurd and unanimously carried, to refer the DISH Wireless application to the Board of Architectural Review.

11. Consideration to refer to the BAR an application from Verizon Wireless for antenna work at the existing public utility wireless communications services facility at 66 Milton Rd.

Michael Sheridan, attorney for Verizon Wireless, appeared at the meeting to support the referral to the BAR an application for antenna work at 66 Milton Road. Verizon Wireless sought to improve service in the area by replacing existing antennas, adding three antennas, and painting them to match the building. Councilwoman Hurd asked if Mr. Sheridan knew the bandwidth, and he replied it was the standard bandwidth of 1900, 2100, and a potential C-band. There will be other equipment replaced within the tower and within the existing equipment shelter, but nothing other than antennas on the exterior.

Councilman Nathan asked if there would be more entities coming forward to add antennas or if they were maxed out. Mayor Cohn stated T-Mobile and AT&T were already there, but it was hard to predict the future.

Councilwoman Johnson made a motion, seconded by Councilman Stacks and unanimously carried, to refer the Verizon Wireless application to the Board of Architectural Review.

Ms. Wilson confirmed for Mr. Sheridan that if the BAR approved the application, Verizon could come back to the next meeting with a resolution for an immediate action.

12. Resolution consenting to the appointment of Mr. John B. Colangelo to the Emergency Medical Services Committee as the Village of Port Chester community representative for a 3-year term.

Adjourned.

13. Resolution consenting to the appointment of Mr. Michael Borelli to the Emergency Medical Services Committee as the Village of Rye Brook community representative for a 3-year term.

Adjourned.

14. Consideration of a request by the Municipal Boat Basin to have a food truck at its National Marina Day Event on July 17, 2022, from 1:00 pm to 3:00 pm with a rain date of July 31, 2022 in coordination with high tide. This event will consist of activities for children with a food and ice cream truck as well as live music.

Due to the urgency of the request, City Manager Usry requested the Council decide before adjourning the meeting.

Mayor Cohn requested a motion to approve the request for the food truck at National Maria Day, and Councilwoman Johnson made the motion. Councilman Nathan seconded the motion. All Councilmembers approved the request.

15. Consideration of a request by Christ's Church to switch the use of Rectory Streets from 8:00-5:00 pm for CCNS Fall Family Day from 10/15/22 to 10/22/22 due to conflict with Novel Night.

Adjourned.

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

Mayor Cohn announced the approval Patrick McGovern's appointment to the Police Advisory Committee, replacing Ed Collins who resigned due to scheduling conflicts. There was no motion needed on the matter.

17. Old Business/New Business.

No old or new business items were discussed.

18. Adjournment.

Councilwoman Johnson made a motion, seconded by Councilwoman Hurd and unanimously carried, to adjourn the meeting at 1:29 A.M.

Respectfully submitted,

Carolyn D'Andrea
City Clerk



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 8, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Post Ida Storm Update.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the City Council hear the update.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 7, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Authorization for City Manager to engage DCMC Partners and finalize a scope of services, including the development of an initial task order and timeline for execution using Contingency funds.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council authorize the City Manager to enter the agreement and use the funds from Contingency.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

See attached.



CITY OF RYE

MEMORANDUM

TO: Greg Usry, City Manager

FROM: Brian Shea, Assistant City Manager

DATE: July 6, 2022

RE: FEMA Technical Assistance and Program Management RFQ Selection

Over the course of the last several months, staff from the City of Rye have been working to identify qualified firms to assist with disaster recovery and longer-term hazard mitigation and resiliency. During the course of this research, elected officials and staff have spoken to representatives from several firms that specialize in providing technical assistance to state and local governments, including:

- DCMC Partners (<https://dcmcpartners.com/>)
- Tidal Basin (<https://www.tidalbasingroup.com/>)
- Haggerty Consulting (<https://haggertyconsulting.com/>)
- Municipal Disaster Consultants, LLC
(<https://www.municipaldisasterconsultants.com/>)
- Meridian Strategic Services (<https://www.meridianstrategicserv.com/>)
- H2O Partners (<https://www.h2opartnersusa.com/>)
- DACK Consulting Solutions Inc. (<https://dackconsulting.com/>)

Following the issuance of an RFQ and upon review of the qualifications from three responding firms, it was determined that staff at DCMC Partners have the depth and breadth of experience and qualifications to best meet the City's needs and strategic objectives at this time.

The next step in this process is to seek Council authorization for use of Contingency monies to engage DCMC and finalize a scope of services, including the development of an initial task order and timeline for execution.



CITY OF RYE

FEMA TECHNICAL ASSISTANCE AND PROGRAM MANAGEMENT SERVICES

SUBMITTED BY

DCMC PARTNERS
400 Hilltop Terrace
Alexandria, VA 22301
(571) 233-3137
bids@dcmcpartners.com

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Cover Letter

June 24, 2022

Brian Shea
Assistant City Manager
City of Rye
1051 Boston Post Road
Rye, New York 10580

RE: Request for Qualifications: FEMA Technical Assistance and Program Management Services

Dear Evaluation Committee:

Thank you for the opportunity to submit our proposal to support the City of Rye with FEMA Technical Assistance and Program Management Services to address strategic flood resiliency recommendations, as well as any other hazard mitigation, recovery, grant, and program management needs identified by the City. We believe that DCMC Partners is the best fit to assist the City with these services. Our team's unique experience and successes include the following:

More than 30 years of providing similar clients with disaster recovery program services, including grants management and project management. The DCMC Team's recovery experts have a more than 30-year track record of helping clients—including states and local governments—successfully address the disaster recovery process. Our team has extensive experience managing recovery and advocating for clients working with every federal recovery program, including FEMA's Public Assistance and Hazard Mitigation Assistance Programs. Our team stands out for our expertise in strategic advice, grants management, quality project management, and long-term recovery planning, as well as for our successes with resolving complex recovery program challenges.

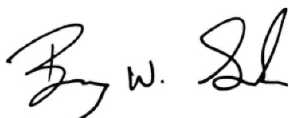
Strong relationships with FEMA. At the federal level, many of our team members have worked at FEMA and other agencies that may provide funding to the City after a disaster event. Our team of experts helped create and implement the very laws, regulations, policies, and programs that guide disaster recovery, and they understand how these regulations have changed over the years. We continue to maintain close relationships with FEMA leadership and will leverage those relationships to benefit the City.

Specializing in managing complex recovery operations, with a focus on retaining funding. The DCMC team solves the problems and disagreements that often accompany complex disaster recovery, hinder recovery efforts, and threaten our clients' financial well-being. Our clients consistently attribute receiving (and more importantly, *retaining*) billions of dollars in additional funding because of our recovery program management and expertise. Furthermore, DCMC's

depth and breadth of experience, as demonstrated in our proposal, makes us the ideal team to support the City with all its response and recovery needs.

Please contact me with any questions you may have about our experience and proposal as the DCMC representative authorized to make representations on behalf of the company. If awarded the contract DCMC affirms its understanding of the services to be provided and commitment to perform the work. We look forward to maintaining a long-term partnership with the City of Rye into the future.

Sincerely,



Barry W. Scanlon, President

DCMC Partners

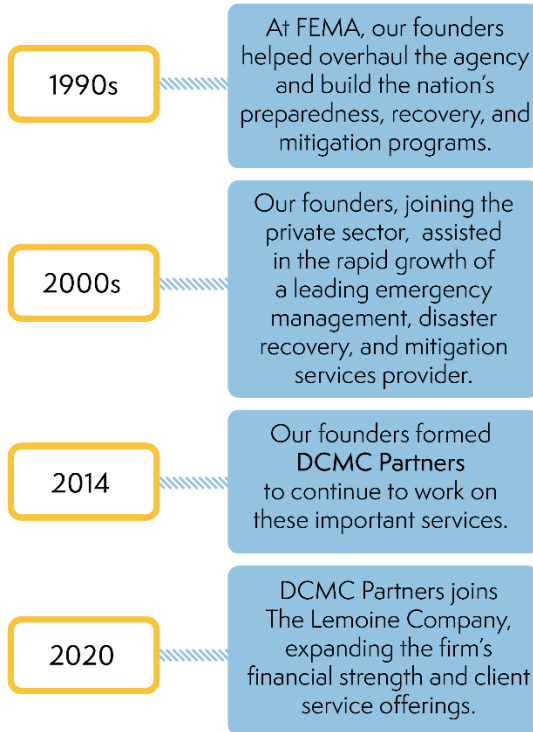
Address: 400 Hilltop Terrace, Alexandria, VA 22301

Phone: (571) 233-3137/ Fax: (855) 274-7478

Email: bids@dcmcpartners.com

Firm Overview

Our History:

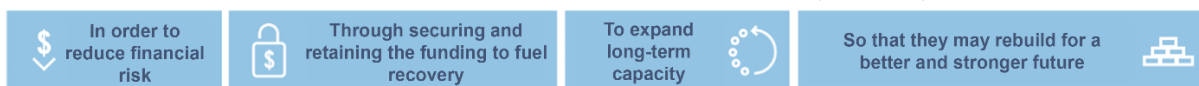


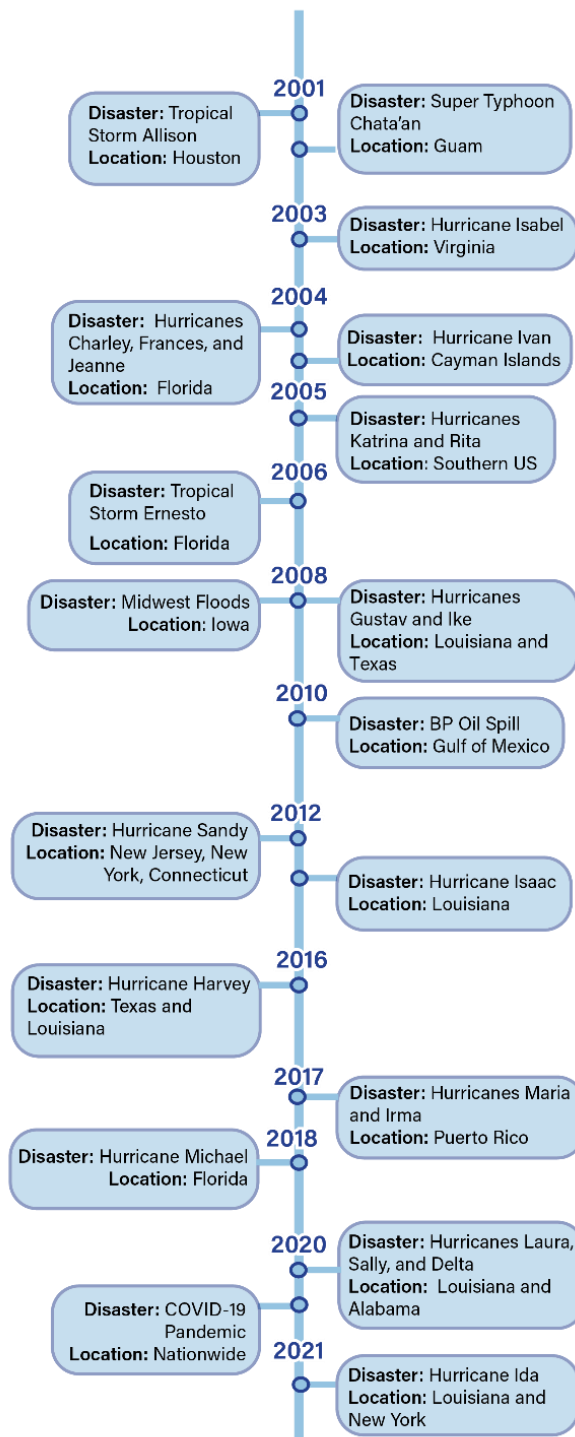
DCMC Partners is a crisis management and public safety consulting firm founded in 2014. DCMC's team of emergency management experts—from the founding partners to the recovery specialists—**has a more than 30-year track record of helping clients across the nation, including healthcare providers, states, local governments, schools, utilities, healthcare providers, and other private nonprofits,** successfully address the disaster recovery process. The team provides our clients with expertise in all areas of disaster recovery, including preparedness, response, recovery, long-term recovery planning, mitigation, insurance, grants management, and appeals. When supporting clients through the recovery process, the DCMC team draws on experience that includes involvement in **nearly every significant disaster in the U.S. since the early 1990s.**

Statement of Qualifications

DCMC's unmatched success in delivering support to clients draws upon its extensive experience with federal recovery programs, including FEMA's Public Assistance and Hazard Mitigation programs. Many of DCMC's team members are former policy makers and program professionals at the state and federal level. They are intimately familiar with the laws and regulations governing disaster recovery, and they understand how the federal government has changed, implemented, and enforced these regulations over the years. Program eligibility and reimbursement rules are often complicated, and retaining funding requires that applicants justify their eligibility, go through the proper reimbursement process, and implement cost-effective mitigation measures. DCMC supports clients at every step of this process.

OUR MISSION: TO HELP CLIENTS PROCEED WITH CONFIDENCE BEFORE, DURING, AND AFTER A CRISIS





DCMC team members have prepared and submitted **more than 35,000 PA Project Worksheets (PWs) for more than 1,500 applicants**, and clients consistently attribute receiving (and importantly, retaining) billions of dollars more in funding to DCMC’s recovery program management and expertise. In all, DCMC experts have helped clients secure, manage, and retain well **over \$35 billion in FEMA and other recovery program funding**, plus billions more in insurance resources.

DCMC team members also have significant experience with hazard mitigation assistance programs, including both disaster and non-disaster programs. Our team has worked with clients to secure funding under FEMA’s FMA and BRIC programs, as well as HUD’s CDBG-MIT programs. **Since 2005, DCMC team members have helped develop, manage, and/or secure over \$6 billion in HMGP funding**, representing thousands of individual projects for their clients and stakeholders.

DCMC’s experience includes **involvement in nearly every significant disaster in the United States since the early 1990s**, including many of the largest and most complex disasters in U.S. history: Hurricanes Katrina, Harvey, and Maria; Hurricane Sandy; the Great Midwest Floods of 2008 and 2011; Hurricanes Laura, Sally and Delta in 2020, the nation-wide COVID-19 Pandemic, and Hurricane Ida in 2021. DCMC team members have provided hundreds of clients with PA Program expertise in the aftermath of disasters such as hurricanes, tornadoes, flooding, and the COVID-19 pandemic.

Our team is expertly capable of providing clients assistance throughout the entire disaster recovery process. Services DCMC provides our clients include:

- Documentation of damage and emergency work to ensure funding eligibility
- Preparation and submission of claims for reimbursement
- Project and construction management
- Client advocacy
- Staff augmentation of client recovery teams
- Review of cost tracking
- Insurance resolution services and duplication of benefit resolution
- Grants management (FEMA and other sources)
- Staff training on recovery grant compliance
- Identification and management of Hazard Mitigation opportunities and funding
- After-action reviews and independent assessments
- Strategic advice and guidance



This experience gives DCMC Partners a unique perspective. DCMC Partners solves the problems and disagreements that often accompany complex disaster recovery, hinder recovery efforts, and threaten our clients' financial well-being, and **does so by helping our clients leverage all of the potential funding streams available to achieve results.** By working the breadth of all Federal programs, our staff also maintains trusted working relationships with States, FEMA, and other federal agencies to discuss and resolve issues of regulatory compliance to promote a more holistic and efficient recovery. Our team is experienced in assisting clients in structuring their recovery and mitigations projects to include multiple funding sources and, in this way, maximize the funding available to our clients. Most recently, proposed Project Manager, Kelly George, has done this for two local governments –

- The City of Galveston, Texas in which she assisted the City with leveraging funding for the 59th Street Pump Station from four funding sources; and
- The City of Southside Place, Texas where Kelly Georg again structured the City's drainage project with multiple funding streams to include CDBG-DR monies leveraged with a local low-interest loan through the Texas Water Development Board.

By leveraging our experience and knowledge of programs, best practices, and past precedent, DCMC has helped clients accelerate their recovery process, resolve potential disputes with FEMA and other federal agencies, and maximize and retain the amount of financial assistance available. With our expertise, the City can take advantage of opportunities for reimbursement of costs

incurred because of existing disasters, take advantage of other federal funding opportunities unrelated to those disasters, and maximize the potential to leverage funding across multiple funding programs to achieve results.

The DCMC team also has ample experience assisting clients with the implementation of flood resiliency recommendations. In fact, two of the proposed key personnel – Kelly George and Rick Patterson – are Certified Floodplain Managers. Further, our team has ample experience assisting clients with their HMGP applications. For example, Kelly George, proposed Project Manager, is currently leading a team in Puerto Rico to manage the Commonwealth’s **\$4 billion Hazard Mitigation Grant Program**. While the project is still in its early stages, and the DCMC team is currently supporting applicants through the HMGP project application process. DCMC’s experts are assisting with responses to requests for information, providing technical review and recommendations, and evaluating sub-applicants’ application packages. **To date, DCMC has assisted with the development of 32 applications and the review of over 78 applications.** DCMC is working with sub-applicants that range from municipalities to governmental agencies to universities. Once the application packages are completed, DCMC will provide support to the subrecipients as they submit requests for reimbursement, assist with HMGP project planning and implementation, and develop an HMGP training plan.

DCMC Partners has experience assisting clients not only *obtain* maximum disaster recovery funding, but also *retain* this funding. When we have assisted clients through the life cycle of the disaster, from initial response through close-out, no client has ever been adversely affected by audit finding and had FEMA funding reduced. On the rare occasion when an audit has resulted in a negative finding, the case file meticulously put together by our team members has held up to further scrutiny and no funding has been pulled back from our clients.

We approach every project with the eventual closeout and audit in mind. From the start of each engagement, we make sure that each case file has the documentation needed to successfully complete closeout and future audits. If an audit occurs while we are still engaged with a client, we assist clients throughout the process and provide any information requested to complete an audit successfully.

Our approach, however, is not limited to retaining funding. **Our aim is to maximize disaster recovery funding** to allow each of our clients to build back better and more resilient after a catastrophic disaster. For example, after Hurricane Katrina, our team assisted the New Orleans Recovery School District in negotiating a global solution to obligate recovery funding quickly while avoiding the burden of documenting every nail, linear foot of pipe, and doorknob required. Hundreds of PWs across dozens of facilities were consolidated **into a single PW worth nearly \$1.8 billion** based on a negotiated grant amount covering all losses. Our team of experts also negotiated on behalf of Charity Hospital in New Orleans after Hurricane Katrina. When FEMA originally offered an estimated \$74 million to repair the facility, our experts argued that there was \$688 million in damages. After negotiating on behalf of the hospital, FEMA agreed to provide \$678 million in disaster recovery funding, **nearly \$600 million more than originally offered.**

Our advocacy to secure funding also extends to the appeals process. In addition to broad program knowledge, our team has extensive experience in preparing, arguing, and successfully resolving appeals in partnership with and on behalf of recipients. Should disagreements arise that cannot be easily resolved at the project level, DCMC will work with the City and State officials to determine the grounds for possible appeals, help frame project information to best address programmatic rules and guidelines, and utilize tested methods of arguing and negotiating resolutions with FEMA to obtain the best possible results. Our appeals specialists will be able to not only draw from past precedent and a detailed knowledge of laws, regulations and policies, we will also be able to draw from extensive research, data analysis, and other analytics to back-up appeals arguments that are presented. It is worth mentioning that two of DCMC's partners and many of our senior staff members have experience leading and implementing FEMA disaster close-out operations, **which provided hands-on experience in addressing the resolution of projects and appeals (from the federal standpoint) related to the most difficult and controversial projects/issues that occurred in a disaster.** This experience provides our team with the unique understanding of the appeals process.

Key Personnel

DCMC takes our commitment to providing continuous staffing support seriously. When selecting our team members, we expect that they will be assigned to a project until that assistance is no longer required by our clients. This ensures that our clients retain institutional knowledge and familiarity and avoids the disruptions that result from regular changes in personnel. DCMC understands that the activities of all our personnel are the responsibility of our management team. We understand that our team members' performance reflects on our company as a whole and impacts our overall performance under this contract. DCMC takes great care in discussing performance expectations with our team.

All members of the DCMC team will report to Kelly George, CFM, Project Manager. This allows DCMC to directly and immediately address any potential issues or concerns related to performance or work products. Kelly will consistently work with the City's project leadership to meet all staffing needs and adjust as necessary. Kelly will serve as the day-to-day contact for the City and will be responsible for managing the relationship with the City. As needed, additional staff with expertise in PA, HMGP, and other federal recovery programs are available to support our team.

We understand that meeting the City's expectations requires the use of robust project controls designed to ensure that staff remains informed and in charge, and that consultant work efforts remain properly focused. All projects are under the purview of our Operations Section, and each project is assigned a Project Manager. Our Project Managers meet with the client representative on a regular basis to make sure our work efforts are aligned with our client's needs, which in the context of a disaster may change from time to time. Our Project Managers then assign tasks to team members for execution, closely monitoring the deliverables, quality of the work product, and timely completion of the projects to meet deadlines. Team Members complete daily reports

outlining their work efforts, which each Project Manager reviews to ensure that all tasks are completed efficiently and accurately. These daily reports are then approved by the Project Manager and will eventually become the invoice received by our clients, who in turn review our collective work effort for final approval. While each Project Manager handles the day-to-day of the project, they each report to the Director of Field Operations, who monitors work effort on a larger scale and can identify where company resources should be allocated.

Subcontractors and ability to hire extra support

DCMC currently has approximately **85 employees** located throughout the United States, as well as a cadre of more than 350 recovery experts available to augment our team on an as-needed basis. Our team members include recovery specialists, grant managers, and subject matter experts in a wide array of specialties including public assistance, hazard mitigation, CDBG-DR, appeals, insurance, planning, and preparedness, among others.

Currently, DCMC does not anticipate requiring the assistance of subcontractors to complete the scope of work included in the RFQ. As part of the One Lemoine family of companies, however, DCMC has easy access to its sister companies which provide construction and project management, debris monitoring, response and EOC support, among other disaster services, should the City require additional support. Further, through The Workforce Group, another member of the One Lemoine family, we have access to an additional cadre of 10,000 employees as needed.

Please see following pages for resumes of key personnel.

MARK MERRITT

Project Role: Project Executive

Company: DCMC Partners

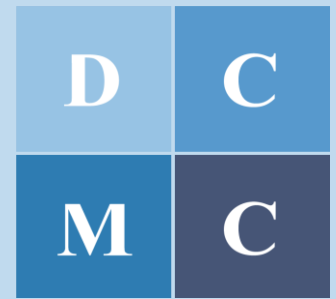
Mark Merritt, Founding Partner and Chief Operating Officer of DCMC Partners, is one of the most experienced and respected disaster recovery consultants in the United States. After graduating from West Point and serving in the U.S. Army, he went to FEMA where he worked in leadership positions in the agency's Response and Recovery Directorate and as FEMA Deputy Chief of Staff, among other positions. After leaving FEMA, he was a founding partner of Witt Associates, an international crisis management consulting firm which he formed with James Lee Witt (the Director of FEMA under the Clinton Administration, from 1993-2001). In 2014, he joined with Drew Sachs and Barry Scanlon, recognized recovery experts in their own rights, to form DCMC Partners.

Mark currently serves as Chief Operations Officer for DCMC Partners. He has worked every significant disaster in the U.S. and its territories over past 25 years, managing recovery teams and overseeing recovery efforts, including large-scale disaster recovery efforts for the State of Louisiana (after Hurricane Katrina and subsequent storms) and for the State of New Jersey (following Superstorm Sandy), the States of Indiana and Iowa (after the devastating 2008 floods), the State of Florida (following the 2004 hurricanes), and the University of Texas System (in the aftermath of hurricanes). These clients attribute billions in funding to Mark and his team that the states would not have otherwise received from the federal government (including \$3 billion in Louisiana and nearly \$500 million in New Jersey).

In the aftermath of Hurricane Irma, Mark deployed to Puerto Rico to support disaster response efforts for Irma, and soon after, Hurricane Maria. The team's initial task was to establish and staff the Territory's Operations Section. Mark was designated by the Governor as the Operations Division Director for Puerto Rico, where he assumed oversight responsibility for all response and recovery operations and reported directly to the Governor, the Governor's Authorized Representative, and the State Coordinating Officer.

SELECTED EXPERIENCE

- Assisted the State of Arizona with responding to the COVID-19 pandemic, leading the efforts to support several dozen hospitals with recovering COVID-related costs.
- Currently assisting Ochsner Clinic Foundation –Louisiana's largest non-profit, academic, healthcare system– with the recovery of COVID-related costs, including costs associated with testing and vaccination, as well as other related activities.
- Led teams directly responsible for more than \$20 billion in federal reimbursement, including \$17 billion in FEMA Public Assistance and \$3.5 billion in FEMA HMGP funding.



YEARS OF EXPERIENCE

40+ years of public safety experience

AREAS OF EXPERTISE

Extensive FEMA experiences and management of various programs.

Worked every major disaster in the US and its territories over the past 25 years.

EDUCATION

Bachelor of Science, National Security and Public Affairs, US West Point Military Academy, May 1986

- Worked alongside federal officials to create recovery policies, train new recovery experts, define federal-state-local organizational structures for recovery, and raise awareness of financial reconciliation programs
- Project Manager for large-scale recovery efforts in the State of Louisiana following Hurricane Katrina, managing more than 400 staff
- Managed response and recovery efforts for disasters, including:
 - 2001-2004 Tropical Storm Alison – University of Texas System
 - 2002 - 2005 Typhoon Pongsona – Government of Guam
 - 2004 - 2007 Florida Hurricanes – Orlando and 21 other communities
 - 2004-2005 Hurricane Ivan – the Government of the Cayman Islands
 - 2005-2017 Hurricanes Katrina/Rita/Ike/Gustav – State of Louisiana
 - 2005-2006 Indian Tsunami – governments of Thailand and Indonesia
 - 2006-2008 Hurricane Ernesto – Commonwealth of Virginia
 - 2008-2014 Hurricane Ike – University of Texas System and Galveston, TX
 - 2008-2014 Flooding – states of Iowa and Indiana
 - 2010-2011 Deepwater Horizon Spill – BP
 - 2011-2012 Red River Floods – State of North Dakota
 - 2011-2014 Hurricane Irene – State of Vermont
 - 2011-2014 Tornado – Joplin, MO and Joplin School System
 - 2012-2014 Superstorm Sandy – State of New Jersey and various communities in New York (Nassau County, Suffolk County; Freeport, Long Island) and Connecticut (Fairfield)
 - 2016 -2017 Louisiana Floods – State of Louisiana
 - 2016-2017 Hurricane Matthew (Berkeley County, South Carolina)
 - 2017-2020 Hurricanes Harvey, Irma, Maria – communities in TX, FL, and Puerto Rico
 - 2020 – Hurricanes Laura, Sally and Delta, as well as the COVID-19 Pandemic

Various Positions, FEMA 1993–2001 Extensive work in the Federal Public Assistance and Individual Assistance programs, as well as other elements of long-term recovery efforts, emergency operations center support and operations, and Incident Command efforts such as Logistics, Supply, and Planning.

- Assisted in review and implementation of the FEMA’s Federal Response Plan.
- Designated the Multi-Agency Chief in the Oklahoma City bombing response. Coordinated local emergency response organizations, fire and police departments and other first responders.
- Provided technical assistance to all 10 FEMA regions in the areas of programmatic and financial reconciliation of disasters. Responded to Inspector General audits and developed standardized financial reporting methods. Responsible for troubleshooting politically sensitive issues with the states and regions.

WORK HISTORY

- DCMC Partners, LLC, Founding Partner and COO 2014 – present
- Witt O’Brien’s, LLC Senior Vice President 2013 – 2014
- Witt Associates, LLC, Founder and Partner 2001 – 2013

KELLY GEORGE, CFM

Project Role: Project Manager

Company: DCMC Partners

Kelly George, CFM, is a nationally recognized hazard mitigation and hazard mitigation planning expert, with more than 20 years of hazard mitigation planning, grants management, project and application development, and project management experience. She brings a broad management perspective to clients and projects, having worked for and with various levels of government and non-profit organizations. Ms. George specializes in program development and management, funding and leveraging strategies, and in the development of large, complex mitigation projects and applications, often with multiple funding sources. She is adept at project planning, grant source integration, staff management, and timeline management. In addition, Ms. George is also a skilled hazard mitigation planner who understands the connection between planning and project development. Ms. George has provided her expertise to a wide range of clients, from States to local governments to universities to the public sector. She is skilled at consensus and partnership building and is a skilled negotiator.

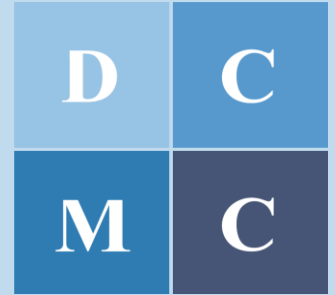
Prior to joining DCMC Partners, Ms. George was the Hazard Mitigation Program Director for Witt O'Brien's, LLC. Ms. George was also a Disaster Assistance Employee (DAE) for FEMA Region IV (Atlanta), where she worked in all aspects of Federal mitigation programs, including the Hazard Mitigation Grant Program, planning, the National Flood Insurance Program, and community education and outreach. Previously, she served as the Disaster Services Director for the East Georgia Chapter of the American Red Cross, in Athens, Georgia.

SELECTED EXPERIENCE

City of Galveston (2017-Present)

Project Manager

- Serve as the Technical Hazard Mitigation Advisor for the City.
- Responsible for program compliance and grant management oversight for the City's \$45 million drainage project, including development of the project's benefit-cost analysis and all Phase 1 deliverables.
- Project Manager for program compliance, technical assistance, grant management, and plan integration for the City's FMA drainage study grant.
- Responsible for periodic updates to the City's FEMA-approved hazard mitigation plan, including the required five-year update.
- Responsible for the development of all hazard mitigation funding requests the City pursues, including emergency power generators and the Causeway Water Line Replacement/Hardening project.
- Provide strategic advice to the City for all hazard mitigation-related issues.
- Responsible for staff management, contract management, and client reporting.



YEARS OF EXPERIENCE

21 years

AREAS OF EXPERTISE

Application Development

Grants Management

Hazard Mitigation

Hazard Mitigation Planning

Program Compliance

Project Development

Project Management

Strategic Advising

Technical Writing

REGISTRATIONS, CERTIFICATIONS & TRAININGS

Certified Federal Grants Manager, Grants Management Certification - Federal Track (MCI)

Certified Floodplain Manager, Association of State Floodplain Managers

FEMA Professional Development Series Certificate

EDUCATION

MPA, Jacksonville State University

BA, University of Memphis

City of Southside Place (2019-Present)

Project Manager

- Serve as the Technical Hazard Mitigation Advisor to the City.
- Responsible for grant management and program compliance for the City's \$1.5M CDBG-DR project.
- Responsible for sourcing and securing \$3.5M in leverage funding for CDBG-DR project.
- Responsible for staff management, contract management, and client reporting.
- Responsible for technical support to the City and Council for matters related to floodplain management, codes and standards, and procurement compliance.

COR3 (2017-Present)

Project Manager

- Serve as Project Manager for HMGP Technical Assistance Contract to support COR3 in the management and implementation of the largest HMGP grant in FEMA history.
- Contract management of \$10M contract, and oversight of 40+ project staff (all remote workers).
- Responsible for all reporting and contract deliverables
- Provide technical support for the review and development of more than \$500M in HMGP funding requests.
- Provide direct technical assistance and strategic advising to the State Hazard Mitigation Officer, the Deputy State Hazard Mitigation Officer, and other COR3 Leadership.

Louisiana Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) (2014-2016)

Mitigation Team Lead

- Served as GOHSEP's safe room expert, provided project and application development and project implementation guidance to applicants throughout the State of Louisiana, including St. Tammany Parish, the Union Parish School Board, and Abbeville General Hospital (Abbeville, Louisiana).
- Provided programmatic guidance and advice regarding all aspects of program delivery and implementation to both GOHSEP and to their applicants, and assisted applicants with programmatic issues, such as procurement, regulatory compliance, public and media relations, and project implementation.
- Served as mitigation team lead, responsible for a staff of six technical experts, including benefit-cost analysis staff.
- Responsible for staff management, contract management, and client reporting.

WORK HISTORY

- DCMC Partners, Senior Hazard Mitigation Manager (2017-present)
- Witt O'Brien's, Hazard Mitigation Program Director (2013-2017)
- Witt Associates, Hazard Mitigation Specialist/Project Manager (2008-2013)
- FEMA, Disaster Assistance Employee (2004-2008)

RICK PATTERSON, CFM

Project Role: Senior PA Subject Matter Expert

Company: DCMC Partners

Rick Patterson has more than 25+ years of experience in emergency management, disaster recovery, and public safety. His experience includes project management, disaster response and recovery, and emergency operations. He has a wealth of experience in helping clients structure and manage their federal disaster assistance programs, enabling them to maximize grant opportunities.

Mr. Patterson has worked with a variety of governments and entities to help them recover from disasters, including the states of Texas and Louisiana, as well as numerous local governments. Mr. Patterson currently supports all DCMC recovery operations as the Senior Public Assistance SME, in addition to providing Project Management of select Utility clients. Mr. Patterson has developed presentations for conferences, seminars, as well as trainings for client engagement from executives to line staff on compliance for procurement, development of recovery programs and preparing for disaster response and recovery.

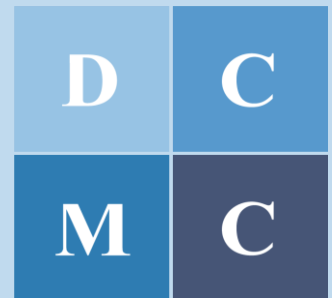
Prior to joining DCMC Partners, Mr. Patterson was the State Coordinating Officer (SCO) for Texas Department of Emergency Management (TDEM). He was responsible for TDEM's closeout facility for Hurricanes Katrina and Rita, as well as Tropical Storm Allison. He also coordinated the state's initial response to Hurricanes Katrina and Rita. As the State Coordinating Officer for the Tropical Storm Allison Closeout Facility, Mr. Patterson was responsible for administering the \$1.2 billion disaster grant. The recovery effort included a \$600 million PA grant, a \$231 million HMGP and a \$400 million IA grant. As the PA Officer, Mr. Patterson was responsible for administering a \$600 million grant to repair damages to governmental entities and public non-profit organizations. Mr. Patterson successfully projected an expense budget, developed procedures for administering the grant and trained an entire staff with no initial emergency management expertise. He also facilitated meetings to resolve problems between subrecipients and FEMA. Mr. Patterson worked with the impacted Electric Co-ops to resolve issues of eligibility and FEMA funding.

SELECTED EXPERIENCE

West Florida Electric Cooperative Association, Inc (2019-Present)

SME-Subject Matter Expert

- Manage West Florida Electric Cooperative's (Florida) Hurricane Michael recovery project, which consisted of an estimated \$60. million PA grants and \$1.2 million in applications under development for Hazard Mitigation Grant Program (HMGP) projects.
- Led a team of recovery specialists in data and document management for PWs and implementing a system to track the production of all PWs.



YEARS OF EXPERIENCE

30 years

AREAS OF EXPERTISE

Data Management

Disaster Recovery

Grants Management

Hazard Mitigation

Project Management

Public Assistance

Strategic Advising

Training

REGISTRATIONS, CERTIFICATIONS & TRAININGS

Debris Management, Disaster Recovery, Incident Command System Training, Texas Department of Public Safety

Management Program, Governor's Center for Management Development

Project Management Program (PMP) Boot Camp,

Certified Floodplain Manager

FEMA Professional Development Certificate

EDUCATION

BS, Prairie View A&M University (1991)

- Oversaw the development of processes for closeout, appeals, and Alternate and Improved projects and is assisting the cooperative in the development and implementation of hazard mitigation grants to reduce the risks to critical infrastructure.
- DCMC developed an automated group of tools to complete site inspections and to document the work performed by force account labor in the performance of disaster work. DCMC Partners developed the electronic filing system to capture all disaster costs for submission to FEMA for reimbursement.
- At the request of WFEC, coordinated with the Statewide Association of Electric Cooperatives to involve both State and Federal leaders in resolving the delays in project development.

Gulf Coast Electric Cooperative, Inc. (2018-Present)

SME-Subject Matter Expert

- Manage Gulf Coast Electric Cooperative's (Florida) Hurricane Michael recovery project, which consists of an estimated \$78.5 million PA grants and \$20 million in applications under development for Hazard Mitigation Grant Program (HMGP) projects.
- Led a team of recovery specialists in data and document management for PWs and implementing a system to track the production of all PWs.
- Oversaw the development of processes for closeout, appeals, and Alternate and Improved projects and is assisting the cooperative in the development and implementation of hazard mitigation grants to reduce the risks to critical infrastructure.
- Oversaw the development of a project worksheet for repairs at Tyndall Air Force Base which involved cost coordination with the Department of Defense. As part of the engagement, DCMC developed an automated site inspection tool used by FEMA site inspectors in documenting the work to be completed.

City of Galveston, Hurricane Ike (2012-2017)

Project Manager

- This \$126 million PA grant included repairs to the city's damaged infrastructure and appropriate mitigation efforts.
- Used understanding of the changes made to the PA program by the Sandy Recovery Improvement Act of 2013 (SRIA) to leverage a \$14 million alternative procedures project for the city.
- Worked with the city, state and FEMA to fund a multi-million-dollar grant for one of the city's water pump stations, mitigating the city's exposure for future loss of water.

WORK HISTORY

- DCMC Partners, Senior Recovery Manager (2017 - present)
- Witt O'Brien's, Senior Program Manager (2006 - 2017)
- Texas Department of Public Safety, State Coordinating Officer/Public Assistance Officer (2001 - 2006)
- Texas Department of Criminal Justice Parole Division, Parole Unit Supervisor/Parole Officer (1992 – 2001)

Case Studies and References

Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency (COR3)

Reference:

*Iris Santos, former director of COR3
Fomento Building, Roosevelt Ave. 4th
floor, Hato Rey, Puerto Rico 00936
(787) 370-2129
iris.santos@ddec.pr.gov*

DCMC Partners was at the forefront of resolving significant issues that surfaced during Puerto Rico's response to and recovery from Hurricanes Irma and María. DCMC led the Government's Operations Section beginning approximately two days after Hurricane María, helping to identify and solve countless issues for the benefit of Puerto Rico, and subsequently helped lead or support all aspects of Puerto Rico's recovery efforts.

DCMC Partners established and staffed Puerto Rico's Grants Management operations. Our team created a management structure for grants activities, built a team, implemented new grants management software to track the billions of dollars of funding expected as a result of these disasters, and managed and reviewed documentation to justify reimbursement. In the first 10 months after the island was completely devastated by the dual hurricanes, DCMC supported the processing of approximately **\$1.4 billion in obligated funds**. Our team also captured information related to more than **\$2 billion in eligible funding** and aggressively gathered and reviewed documentation to reduce Puerto Rico's financial risk and to justify payments, while both identifying and solving problems before submitting the documentation to FEMA.

DCMC Partners formed supportive relationships with each Puerto Rican agency, educating, training, and helping each manage its recovery efforts. DCMC and its local partners trained hundreds of recovery staff, agency staff, and municipalities on understanding and managing the grants process and using grants management systems.

Our team implemented a grant tracking platform and customized the system for Puerto Rico. Our team trained more than 400 people on its use. Prior to the hurricanes, Puerto Rico used a spreadsheet to track claims for smaller disasters. The new system allowed real-time information to flow between the recipient and subrecipient levels, providing accountability and transparency for all aspects of recovery. Users had access to view documentation and project status. DCMC also trained FEMA on the system, including the Office of Inspector General.

When the federal government mandated Section 428 across the entire disaster, DCMC leadership advocated for Puerto Rico in the development of its guidance for Public Assistance. DCMC developed Puerto Rico's position statements on draft Section 428 protocols, identifying concerns and putting voice to them in discussions and formal communications. After months of advocacy, we helped shape the initiative to address some of Puerto Rico's most serious concerns, including an agreement that allowed Puerto Rico to jointly perform cost estimates (where originally FEMA stated that the federal agency would perform all cost estimates independently). DCMC also won Puerto Rican representation on the Expert Panel and

secured FEMA's concurrence that other members of the panel must be agreed upon, providing additional protections in the event that FEMA and the government disagree on cost-estimates for the eventual fixed-cost grant award under Section 428.

As part of the engagement, DCMC Partners worked with a diverse mix of Puerto Rican leadership on the need for a long-term recovery office and provided advice on its scope and roles, structure and operation. Our team members drew from their experience creating similar recovery offices responsible for managing recovery efforts (including grants management operations) in Louisiana (after Hurricane Katrina), Iowa (after the 2008 Floods), New York and New Jersey (after Hurricane Sandy).

DCMC worked alongside the government's leadership and staff to help justify and obtain federal recovery programs and funding, including assisting with the development of the "Build Back Better Puerto Rico" report used to justify supplemental funding requirements from Congress for recovery. DCMC was instrumental in identifying opportunities to obtain resources available for recovery and in implementing programs in such a way that maximized the benefits to Puerto Rico. Below is only a sample of DCMC's accomplishments. These achievements demonstrate our team's ability to leverage our hands-on experience with federal recovery programs, past precedent, policies, regulations, and best practices to identify creative solutions for recovery:

- Secured 90/10 cost-share (resulting in billions of dollars in savings)
- Negotiated 100% funding for Categories A & B for initial months
- Negotiated \$20 million to build capacity to implement federal recovery programs
- Negotiated a \$200 million Project Worksheet with a \$100 million advance for the electric power utility, PREPA
- Convinced FEMA to classify USACE's power restoration work as Temporary Repairs (allowing PREPA to fully retain its eligibility to claim potentially billions of dollars in Permanent Work funding)
- Persuaded FEMA to agree to the use of the 2018 International Building Code (IBC) to guide reconstruction (a potential increase of several billion dollars of additional funding)
- Justified \$79 million in federal funding for a robust, sustainable code enforcement program, which allows Puerto Rico to implement an aggressive code enforcement

"Due to catastrophic losses from Hurricanes Irma and Maria, it took extensive work, creativity, and patience to shape disaster policy and develop new programs and approaches to meet Puerto Rico's unique needs. DCMC convinced FEMA to classify USACE's power restoration work as Temporary Repairs (**allowing PREPA to fully retain its eligibility to claim potentially billions of dollars in Permanent Work funding**) and persuaded FEMA to agree to the use of the 2018 International Building Code (IBC) to guide reconstruction (**a potential increase of several billion dollars of additional funding**). DCMC delivered great value and results for COR3 and Puerto Rico, and I am pleased to have been able to work with them."
- Iris "Chiqui" Santos, Former COR3 Director

program (including the hiring, training, and outfitting of more than 200 new code enforcement officers) to guide reconstruction efforts and to allow the use of any permit fees and fines collected during the period of federal funding to make the program sustainable over time

- Persuaded FEMA to count public-private partnership funding towards its hazard mitigation match (potentially allowing Puerto Rico's government to participate in the program at no cost)
- Developed and obtained rapid approval for Public Assistance and Hazard Mitigation Grant Program Administrative Plans
- Embedded DCMC staff in FEMA's Section 428 group to represent Puerto Rico and provide visibility
- Persuaded FEMA to agree to jointly complete Section 428 cost estimates with Puerto Rico and secured an agreement to have Puerto Rican representation on the Section 428 Expert Panel
- Created the Debris Technical Assistance Program to identify and solve high-risk problems alongside municipalities
- Trained hundreds of recovery staff and subrecipients on grants management topics from documentation to data management

As part of this engagement, DCMC Partners had personnel assigned to each agency and public corporation, including DTOP, to provide technical assistance in the development and eventual reimbursement of its Emergency Work project worksheets under categories A and B, including the collection and review of backup documentation. Specifically, DCMC worked with DTOP on a Category A PW for Hurricane Irma, with a value of \$996,943. For Hurricane Maria, DCMC worked with DTOP to develop three Category A PWs, totaling over \$234 million in FEMA obligations, as well as five Category B PWs, totaling over \$4 million in FEMA obligations.

After COR3 hired three large consultant firms to support overall recovery efforts in 2018, DCMC was brought in as a subcontractor under two of the resulting contracts at the request of COR3 so that we could continue our valuable support efforts. DCMC's focus at that point was in providing strategic program and policy guidance for overall recovery efforts, supporting the needs of private non-profit organizations and both designing and implementing the Private Property Debris Removal Program (PPDR). DCMC continues to provide technical assistance to COR3 through its current contract to help the Government manage and implement its \$4+ billion Hazard Mitigation Grant Program (HMGP), which represents the largest HMGP allocation in FEMA's history.

City of Galveston, Texas

Reference:

*Tesa Wroblewski, Director of Disaster
Recovery and Grants
825 Rosenberg Street, Galveston, TX
77550
(409) 797-3517
twroblewski@galvestontx.gov*

The City of Galveston engaged DCMC Partners to support the City's recovery from recent hurricanes and future events. DCMC is providing technical assistance to resolve open issues with PA grants. This includes the drafting of appeals, development of closeout packages, and resolution of insurance duplication of benefits. DCMC initially drafted appeals for disputed project worksheets from Hurricane Ike. To support its recovery

from Hurricane Harvey, the City added task orders for developing HMGP applications for drainage improvements.

DCMC team members have supported the City's recovery efforts for more than a decade. Under previous contracts, our team members helped the City of Galveston obtain and keep well over \$100 million in FEMA funding in the aftermath of Hurricane Ike. We helped resolve issues and secure funding for the City for debris removal, emergency protective measures, and damages to both facilities and infrastructure. We balanced insurance claims with FEMA grants to maximize total reimbursement for the City's losses. We conducted damage assessments, resolved funding



issues associated with "saltwater trees" (trees killed over time by saltwater intrusion), successfully addressed FEMA's initial refusal to provide funding for roadways and infrastructure that had been destroyed but could not be replaced due to coastal erosion, and countless other matters requiring both timely and expert engagement. In doing so, our team members regularly helped maximize funding for the City above and beyond that which was offered by FEMA, adding tens of millions of

additional dollars to the resources available to the City for its recovery efforts.

DCMC's hazard mitigation SME also worked with the City to develop a project to replace the City's 59th Street Potable Water Pump Station, which was heavily damaged by Hurricane Ike (2008). It was determined that the City and its residents would be better served by a replacement of this critical asset rather than repair of the pre-storm asset, including a complete upgrade of all pump station equipment and the installation of a 10MW emergency power generator. The pumps station building would be designed and constructed to meet FEMA's safe room standards and be capable of withstanding a Category 05 hurricane.

The final project leveraged funding from HMGP, PA (Alternate Project) CDBG-DR, the Texas Water Development Board, and the City's General Fund. This successful leveraging of funding and the careful integration of the eligible scopes of work allowed the City to move forward with

their recovery secure in the knowledge that this critical pump station would not fail in the next catastrophic storm event.

Tangipahoa Parish School System (LA)

Reference:

*Bret Schnadelbach, CFO
Tangipahoa Parish School System
59656 Puleston Road, Amite, LA 70422
(985) 748-2433
bret.schnadelbach@tangischools.org*

In the wake of the August 2016 floods, the Tangipahoa Parish School System was facing damages of between \$4 and \$5 million across 6 school buildings plus auxiliary structures, as well as substantial debris removal costs. In recognition that they needed help, the System hired DCMC to assist with their recovery efforts. After working with the System and its

contractors to provide advice to ensure compliance, evaluate damages and determine what had and had not yet been completed, DCMC's recovery experts immediately engaged with GOHSEP and FEMA to encourage a higher level of engagement and to facilitate the completion of Project Worksheets so that recovery funding could begin to flow. Our on-site recovery expert also worked with the System to identify both additional damages that the school had overlooked, as well as opportunities to incorporate cost-effective mitigation into the recovery.

DCMC also worked with the System and its insurers to balance insurance claims with FEMA eligibility to maximize total funding for recovery-related needs. While final values for the recovery effort are still evolving, DCMC's participation has conservatively resulted in the addition of **more than \$500K in additional funding beyond that originally expected** to be received by the System – an amount that far exceeds the amount paid to DCMC for its services. Dozens of issues and misunderstandings with FEMA were resolved prior to them becoming problems standing in the way of recovery. In addition, both the System and FEMA have noted that **our involvement and quality documentation of the System's claims** has successfully advanced recovery efforts more quickly and have **lowered financial risk** to the System during future program reviews and audits. Our work was such that in the immediate aftermath of Hurricane Ida, the System contracted the services of DCMC Partners to again assist them with their recovery efforts. It bears mentioning that TPSS has engaged DCMC Partners again for their response and recovery needs from Hurricane Ida and we are actively working with them now to provide counsel, assess contracts for eligibility, inspect damaged facilities and capture data for presentation to FEMA.

Both the Tangipahoa Parish School System and FEMA have noted that **our involvement and quality documentation of the System's claims** has successfully advanced recovery efforts more quickly and have **lowered financial risk** to the System during future program reviews and audits. Our work was such that in the immediate aftermath of Hurricane Ida, the System contracted the services of DCMC Partners to again assist them with their recovery efforts.

Pricing

DCMC’s typical rate structure is a time-and-materials structure, with necessary expenses charged to the client at-cost consistent with the Federal GSA schedule. Work will be performed remotely when possible and with client concurrence in order to contain overall costs.

As work is assigned, DCMC would prepare a draft Task Order outlining the level of work and recommended staff composition for any task or timeframe and will present that to the client for approval. Positions listed below are ones we anticipate could be utilized based on the broad scope of work in the RFQ; however, actual usage will depend on the needs of the client and the complexity of the work to be performed. The possible and proposed job titles and rates are provided below:

Position	Rate
Project Executive	\$204
Project Manager	\$176
Subject Matter Expert	\$174
Senior Recovery Manager	\$170
Recovery Specialist	\$154
Recovery Officer	\$142
Senior Mitigation Manager	\$159
Mitigation Specialist	\$149
Mitigation Officer	\$139
Senior Grants Manager	\$155
Grants Specialist	\$144
Grants Officer	\$133
Senior Technical Specialist	\$169
Technical Specialist	\$158
Technical Officer	\$146
Senior Cost Estimator	\$166
Cost Estimator	\$135
Senior Construction Manager	\$172
Construction Manager	\$157
Construction Field Inspector	\$132



CITY COUNCIL AGENDA

DEPT.: Finance

DATE: July 13, 2022

CONTACT: Joe Fazzino, Deputy Comptroller

AGENDA ITEM: Presentation of the 2021 City Financial results by Brendan K. Kennedy of the auditing firm of BST & Co, LLP.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council hear the presentation.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 7, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: NY State Consolidated Funding Application update.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council hear the update.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The NY State Consolidated Funding Application (CFA) was created to support regional and economic development of the region. The CFA has streamlined and expedited the grant application process, ensuring less bureaucracy and greater efficiency in applying for state grants.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 1, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Westchester Power Update and Authorization for City Manager to sign an updated MOU to provide a Community Choice Aggregation Program.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council authorize the City Manager to sign the agreement.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: On November 7, 2018 the City Council adopted a local law titled Chapter 74, "Community Choice Aggregation (Energy) Program" to allow the City to determine the default supplier of electricity and natural gas for its residential and small commercial suppliers. Through Sustainable Westchester, the City has continued to provide the renewable energy since 2019 within the pre-established range of rates to those residents who participate in the program. However, due to rising energy prices, Sustainable Westchester has needed to pause its Community Choice Aggregation Program in order to secure a new electricity supply contract at the new available rates which exceed the original range. The new MOU has been modified to use standard municipal "lowest responsible bidder" language.

MEMORANDUM OF UNDERSTANDING
For
Participation in the Westchester Power Contract
For Communities in the Con Edison Service Territory

This Memorandum of Understanding is entered into by and between:

Sustainable Westchester, Inc., a New York non-profit corporation (“Sustainable Westchester”), and the City / Town / Village of _____ (the “Municipality”), a local government member of Sustainable Westchester (each a “Party” and collectively, the “Parties”).

1. Background:

- a. In February 2015, the New York Public Service Commission (“PSC”) issued an Order for Case 14-M-0564 as follows: “The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order...”
- b. The PSC subsequently issued an Order for Case 14-M-0224 on April 21, 2016, which authorized Community Choice Aggregation (“CCA”) throughout New York State (the “CCA Order”) and on November 15, 2018 issued the “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” reauthorizing the Sustainable Westchester CCA program under a Master Implementation Plan.
- c. Sustainable Westchester’s CCA Program enrolled Participating Customers from an initial group of 20 participating municipalities in April 2016. Since then, nine additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For participating municipalities in the Con Edison utility territory, the current Electric Service Agreement for the Sustainable Westchester CCA Program will terminate on the first meter read date after June 30, 2022.
- e. In compliance with the PSC CCA Orders, the Municipality has adopted local legislation to enable Community Choice Aggregation.
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester CCA Program, the Municipality wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

2. Definitions:

- a. **2021 ESA:** The ESA which implemented the Sustainable Westchester CCA Program during the period from January 1, 2021 to the first meter read date after June 30, 2022.
- b. **2022 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing no earlier than the first meter read date after July 1, 2022 and no later than the first meter read date after April 30, 2023 for the Con Edison service territory. The 2022 ESA shall have substantially the same terms outlined in the attached 2022 ESA Template (Attached as Exhibit 1). The 2022 ESA Template sets out the new prices and terms and contains clarifying changes to the 2021 ESA.

- c. **CCA Orders:** Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224 (the “CCA Framework Order”), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; and the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan.
- d. **Community Choice Aggregation Program or CCA Program or Program–** A municipal energy procurement program, which replaces the incumbent utility as the default supplier for all Eligible Consumers within the Participating Municipality, as defined in the PSC CCA Orders.
- e. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) that procures electric power for Eligible Consumers in connection with this CCA Program.
 - i. **Compliant Offer:** Electric power supply offer from a Competitive Supplier that meets the requirements specified in this MOU and the 2022 ESA and that is submitted by the lowest responsible bidder, subject to the terms and conditions set forth in the 2022 RFP.
- f. **Default Product:** The product selected by the Municipality for supply to its Eligible Consumers upon enrollment, unless they take action to select a different product or opt out.
- g. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
- h. **Electric Service Agreement (“ESA”):** An agreement that implements a CCA Program and contains all the terms and conditions of the Program.
- i. **Eligible Consumers** – Residential and small commercial consumers of electricity who have been served by the program under the 2021 ESA and have not opted out. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of the 2022 ESA.
- j. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester, which has adopted the applicable local legislation for the Community Choice Aggregation Program.
- k. **Participating Customers:** Eligible Consumers enrolled in the Program, including Opt-out Eligible Consumers who have been enrolled subsequent to the opt-out process and other customers who have opted in.
- l. **Program Manager:** Sustainable Westchester, a non-profit corporation of which the Participating Municipality is a member.
- m. **Public Service Commission (“PSC”):** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission.
- n. **Qualifications Review:** A verification of the status of the Competitive Supplier as an electricity supplier in the Distribution Utility’s service territory. A precondition for

attaining such status is that Competitive Supplier has met the credit requirements established by the New York Independent Systems Operator.

- o. **2022 RFP:** The request for proposals to suppliers to provide energy to Participating Customers for the 2022 ESA.
- 3. Purpose:** The purpose of the Memorandum of Understanding is as follows:
 - a. To establish participation by **The Municipality (hereafter, the “Participating Municipality”)** in a Community Choice Aggregation Program (hereafter, the “Program”) that will be managed on its behalf by **Sustainable Westchester, (hereafter, the “Program Manager”)** under the 2022 ESA.
 - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2022 ESA in the event they execute it.
 - c. To affirm that the Participating Municipality and Program Manager agree to execute the 2022 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), below.
- 4. Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester agrees to perform all duties outlined in the 2022 ESA and, prior to execution of that agreement, Program Manager agrees to:
 - a. Provide the involved agencies and parties to the PSC CCA Orders, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
 - b. Manage the contract process including:
 - i. the collection of indicative pricing and other inputs against which to evaluate the 2022 ESA offers,
 - ii. the preparation of the 2022 ESA,
 - iii. the acceptance, secure opening, and review of the indicative pricing and 2022 ESA offers, and
 - iv. the organization of the Qualifications Review, offer evaluation, and selection of a Competitive Supplier, all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
 - c. Sign the 2022 ESA in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed qualified for the duration of the 2022 ESA by the Qualifications Review, and
 - ii. such Competitive Supplier’s offer is deemed by the Program Manager to be a Compliant Offer as defined in Section 2 above.
 - d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
- 5. Roles and responsibilities of the Participating Municipality:** The Participating Municipality agrees to:
 - a. Sign the 2022 ESA, selecting the 100% Renewable Clean Power Product as the Default Product for its Eligible Consumers, in a timely fashion, subject to the conditions that:

- i. the Competitive Supplier is deemed qualified for the duration of the 2022 ESA by the Qualifications Review, and
- ii. such Competitive Supplier’s offer is deemed by the Program Manager to be a Compliant Offer as defined in Section 2 above.

6. Term and Termination: Memorandum of Understanding shall expire on the earlier of December 31, 2022 or the date on which the 2022 ESA is signed by the Participating Municipality, the Program Manager, and the selected Competitive Supplier. Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the 2022 ESA attached hereto as Exhibit 1.

IN WITNESSETH WHEREOF, the Parties have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

City/Town/Village of _____

Authorized Official Name and Title: _____

Signature: _____

Address: _____

Telephone(s): _____

E-Mail Address: _____

Address for Notices: _____

Sustainable Westchester, Inc.

Authorized Official Name and Title: Nina Orville, Executive Director

Signature: _____

Address: 40 Green Street, Mount Kisco, NY 10549

Telephone(s): (914) 242-4725

E-Mail Address: nina@sustainablewestchester.org

Address for Notices: 40 Green Street, Mount Kisco, NY 10549

Attachments: Exhibit 1, 2022 Con Ed ESA Template

Electric Service Agreement

Exhibit 1 to accompany the Memorandum of Understanding
on Community Choice Aggregation
between local government members of Sustainable Westchester, [SUPPLIER], and Sustainable
Westchester

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RECITALS

WHEREAS, Sustainable Westchester, Inc. sought approval of a demonstration community choice energy aggregation (“Community Choice”) program in Westchester County in 2014, which would allow local governments to participate in a Sustainable Westchester program to procure energy supply from an Energy Services Company for the residents of the municipalities;

WHEREAS, on February 26, 2015, the Public Service Commission of the State of New York approved implementation of the first Community Choice pilot program in New York State;

WHEREAS, the PSC subsequently issued the order “Authorizing Framework for Community Choice Aggregation Opt-out Program” on April 21, 2016 (the “CCA Framework Order”) enabling Community Choice throughout New York State;

WHEREAS, the Westchester Community Choice Aggregation program (also known as Westchester Power) is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

WHEREAS, the City/Town/Village of _____ (“Municipality”) has adopted a Local Law to participate in the Sustainable Westchester Community Choice Program (“Program”) to aggregate customers located within the Municipality and to negotiate competitive rates for the supply of electricity for such customers;

WHEREAS, the program allows Municipality to solicit competitive bids for the supply of electricity individually or as part of a buying group with other municipal aggregators;

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding 202, issue a request for proposals (“RFP”) to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the “2016 ESA”) with seventeen municipalities in the Con Edison utility territory, and signed a subsequent round of contracts in 2019 and 2021 (the “2021 ESA”) increasing participation to twenty-four participating municipalities as of June 2022, and the latter round of contracts expire on June 30, 2022;

WHEREAS, [SUPPLIER], an entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) (the “Competitive Supplier”), desires to provide Full-Requirements Power Supply to customers located within the Municipality, pursuant to the terms and conditions of the Municipality's Program and this Electric Service Agreement (“ESA”);

WHEREAS, the Municipality desires that the Competitive Supplier provide Firm Full-Requirements Power Supply and Consolidated Billing as an alternative to Default Service for customers within the Municipality;

WHEREAS, Competitive Supplier is willing to provide two distinct electric supply products and two corresponding pricing levels, (1) a Standard Product and price, and (2) a 100% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs and price as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the [Standard Product / 100% Renewable Clean Power Product] as the Default Product for Participating Customers;

WHEREAS, Competitive Supplier agrees to pay a fee to Program Manager;

WHEREAS, Municipality prefers for Competitive Supplier to collect and remit the fees due the Program Manager;

WHEREAS, the local governments that participate in the Sustainable Westchester Community Choice Program, including this Municipality, intend that this Agreement be uniform in form and substance in each instance throughout the Program; and

NOW THEREFORE, IT IS AGREED THAT, Municipality, Program Manager, and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

Capitalized terms that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

1.0 Associated Entities – Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.

1.1 Bankruptcy - With respect to a Party, (i) such Party ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.2 CCA Orders – Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224 (the “CCA Framework Order”), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; and the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan.

1.3 100% Renewable Clean Power Product - Firm Full-Requirements Power Supply matched with New York Voluntary Clean Power RECs (hydropower, solar energy or wind energy) as defined in, and subject to the Attribute delivery rules set forth in, the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the Public Service Commission’s Environmental Disclosure Program, as further described and defined in Exhibit A—Part 2.

1.4 Commercially Reasonable - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party’s obligations under this ESA.

1.5 Community Choice – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Customers within the Municipality.

1.6 Competitive Supplier or Energy Services Company (“ESCO”)– An entity duly authorized to conduct business in the State of New York as an ESCO.

1.7 Consolidated Billing - A billing option that provides Participating Customers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

1.8 Default Product – The product selected by the Municipality for supply to its Participating Customers, unless they take action to select a different product or opt out.

1.9 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier.

1.10 Delivery Term - The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.

1.11 Distribution Utility - Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Municipality.

1.12 Electronic Data Interchange (“EDI”) - The exchange of business data in a standardized format between business computer systems.

1.13 Effective Date - The date upon which this ESA has been executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

1.14 Eligible Customers – Customers of electricity eligible to participate in the CCA Program, either on an Opt-out or Opt-in basis, as delineated in the CCA Framework Order. For

the avoidance of doubt, all Eligible Customers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality and served by the Distribution Utility, as such boundaries exist on the Effective Date of this ESA.

1.15 ESA - This Electric Service Agreement.

1.16 Environmental Disclosure Label – The fuel mix purchased by an ESCO and the related emissions of those fuels compared to a statewide average, which is required to be reported under the DPS’s Environmental Disclosure Program.

1.17 Federal Energy Regulatory Commission (“FERC”) - The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

1.18 Firm Full-Requirements Power Supply - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during the contract term to Participating Customers at the Point of Sale.

1.19 Force Majeure - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.

1.20 General Communications - The type of communications described and defined in Article 5.7 herein.

1.21 Governmental Authority - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Municipality.

1.22 Governmental Rule - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

- 1.23 kWh, kW - Kilowatt-hour and kilowatt, respectively.
- 1.24 Local Law – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice Program.
- 1.25 Memorandum of Understanding 2022-06 – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.
- 1.26 Newly Opt-Out Eligible Customers – Residential and small commercial customers of electricity that become Opt-out Eligible Customers after the Effective Date, including those that move into Municipality and those who complete or terminate other 3rd party supply contracts and have returned to Default Service, provided these customers have not previously opted out of the Program.
- 1.27 New Taxes - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Customers.
- 1.28 Nominal Start Date – [Date], which is the date immediately preceding the Service Commencement Date.
- 1.29 NYISO - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.
- 1.30 Opt-out Eligible Customers - Eligible Customers that are eligible for Opt-out treatment as delineated in the CCA Framework Order. For the avoidance of doubt, Opt-out Eligible Customers shall not include customers that have previously opted-out of the Program.
- 1.31 Participating Customers - Eligible Customers enrolled in the Program, including Opt-out Eligible Customers who have been enrolled subsequent to the opt-out process and other customers who have been enrolled after opting in.
- 1.32 Parties - The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.
- 1.33 Point of Delivery - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.
- 1.34 Point of Sale - The electric meter for each Participating Customer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

- 1.35 Program - Sustainable Westchester Community Choice Aggregation Program.
- 1.36 Program Manager – Sustainable Westchester, Inc., a non-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Customers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.
- 1.37 PSC or DPS - The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.
- 1.38 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same rate class, but not including a Regulatory Event that applies uniquely to Competitive Supplier. Notwithstanding anything to the contrary in this ESA or the RFP, any changes to the Purchase of Receivables (POR) approved by the PSC shall be deemed a Qualifying Regulatory Event hereunder.
- 1.39 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.
- 1.40 Retail Price - As set forth in Exhibit A.
- 1.41 Service Commencement Date - The date of the first meter read date for Participating Customers after the Nominal Start Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.
- 1.42 Standard Product - Firm Full-Requirements Power Supply consisting of the standard generation mix, meeting the minimum Clean Energy Standard for electric power established by New York State.
- 1.43 Term - As defined in Article 4.1.

1.44 Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343).

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Customers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full-Requirements Power Supply only to Participating Customers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Customers who opt-out of the Program and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise.

In accordance with Article 3 below, all Opt-out Eligible Customers shall be automatically enrolled in the Program unless they choose to opt-out or have previously opted out of the Program. In the event the geographic boundaries of the Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Firm Full-Requirements Service to those Participating Customers located within the Municipality as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Customers receive the electricity supplies to be delivered pursuant to this ESA.

The Municipality shall specifically authorize the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Customers as is reasonably available from the Distribution Utility. The Distribution Utility Fees for the provision of this data shall be paid for by the Supplier. Competitive Supplier shall request consumption data for individual Participating Customers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Manager, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Customers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Participating Customers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the CCA Orders and Local Law for Eligible Customers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Customers interested in contracting for electric supply and on behalf of all Participating Customers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

The Municipality represents that the Local Law has been duly adopted.

Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- a) maintain Competitive Supplier's license from PSC (as such term is defined in the Local Distribution Utility's Terms and Conditions for Competitive Suppliers);
- b) execute any appropriate NYISO applications and agreements;
- c) obtain authorization from the FERC to sell power at market-based rates;
- d) complete EDI testing with Distribution Utility;
- e) provide all other documentation required by the Distribution Utility; and
- f) satisfying all insurance requirements set forth in Article 16 or elsewhere in this ESA.

If Competitive Supplier has not fulfilled all such requirements fourteen days prior to the Nominal Start Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

2.5 OWNERSHIP AND USE OF ELIGIBLE CUSTOMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Customer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Customers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Customer data without the prior written consent of the Municipality is strictly prohibited. Competitive Supplier may share such Eligible Customer data with third-party vendors as reasonably necessary to

accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables or enhancement of data exchange between the Parties), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Customer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Customer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Customer data, Competitive Supplier and its Associated Entities shall treat such Eligible Customer data as confidential information. Competitive Supplier may use Eligible Customer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CUSTOMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CUSTOMER CHOICE

The Parties acknowledge and agree that all Participating Customers have the right, pursuant to CCA Orders, Local Law, and the Program, to change their source or product of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not interfere with the right of Participating Customers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, however, the Parties may take Commercially Reasonable measures to encourage Participating Customers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

3.2 NOTIFICATION TO NEWLY OPT-OUT ELIGIBLE CUSTOMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a Newly Opt-out Eligible Customer and has provided to Competitive Supplier such Newly Opt-out Eligible Customer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such Newly Opt-out Eligible Customer (i) of the date on which such Newly Opt-out Eligible Customer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such Newly Opt-out Eligible Customer as of the same date, subject to the opt-out provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be

mailed to each such Newly Opt-out Eligible Customer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A; (iii) state how such Newly Opt-out Eligible Customer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Customers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Customers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

3.3 CUSTOMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Manager may conduct customer awareness efforts at its sole expense.

3.4 ENROLLMENT

3.4.1 Participating Customers –All Opt-out Eligible Customers as of the Effective Date will be enrolled in the Program, thus becoming Participating Customers, under the terms of this ESA unless they opt-out during the 30-day period specified in the PSC Orders. Participating Customers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Customers as of the Effective Date, as well as such Participating Customer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Customers as of the Service Commencement Date.

3.4.2 Newly Opt-out Eligible Customers - If Newly Opt-out Eligible Customers elect not to opt-out of the Program as provided in Article 3.2, such Newly Opt-out Eligible Customers will be automatically enrolled by Competitive Supplier in the Program. These Newly Opt-out Eligible Customers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at a price as defined in Exhibit A. For the avoidance of doubt, Participating Customers that have opted into the Program shall also be enrolled in the Program at a price as defined in Exhibit A. Competitive Supplier shall enroll such Newly Opt-out Eligible Customers and opt-in customers in accordance with applicable PSC and Distribution Utility rules. The Parties agree and acknowledge that on or about the customer meter read dates each [DATE] and [DATE] during the term of this ESA, Competitive Supplier shall perform a refresh or new customer sweep to create a list of Newly Opt-Out Eligible Customers. As a result of any such refresh or sweep performed, Newly Opt-Out Eligible Customers will be automatically enrolled in the Program unless a customer opts out of the Program; provided, however, that no refresh,

sweep or enrollment of such Newly Opt-Out Eligible Customers that are part of any refresh or sweep shall occur less than four (4) months prior to the End Date or in the event of termination of this ESA. Competitive Supplier may perform a refresh and enroll Newly Opt-out Eligible Customers outside of the October and March periods if mutually agreed to by all the Parties hereunder.

3.4.3 Eligible Customers Who Have Previously Opted Out - At any time during this ESA, Eligible Customers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Customers at a price as set forth in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Customers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

3.4.4 Customers Served by Third-Parties - Customers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Customers under this ESA until such program terminates or is otherwise completed. Competitive Supplier agrees that customers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Customers. Competitive Supplier further agrees that customers being served under other competitive supply programs that terminate or are otherwise completed become Newly Opt-out Eligible Customers and may be automatically enrolled as Participating Customers under the CCA Orders in accordance with Section 3.2 above. Eligible Customers who opt-in as provided in this Article 3.4.4 or who enroll following the termination or completion of another competitive supply program offered by a third party shall be enrolled in the Program at the rates reflected in Exhibit A.

3.4.5 Termination Fees. There shall be no termination fees for any residential, small commercial, or municipal Participating Customers to disenroll from the Program.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date; provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate as delineated in Exhibit A, unless this ESA is terminated earlier under Article 4.2 below ("Term").

4.2 TERMINATION

This ESA may be terminated at any time upon written notice:

- a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in Article 4.2(f), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Customers; or
- d) by the Municipality, if a court, PSC or other lawful authority adjudicates contrary to Article 6; or
- e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Customers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination of this ESA, Competitive Supplier shall have all Participating Customers switched back to obtaining supply from the Distribution Utility by submitting drop requests of all Participating Customers via EDI to the Distribution Utility in a form acceptable to the Distribution Utility. Competitive Supplier shall provide written notice to Program Manager at

least sixty (60) days prior to submitting any such Participating Customer drop requests in accordance with Section 4.3, which notice shall include the timing of submission of such requests to the Distribution Utility, that Competitive Supplier intends to be executed before or in anticipation of the termination of this ESA; provided, however, that Competitive Supplier's notice obligation shall not apply to any Participating Customer drop that is initiated by a Participating Customer.

4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A Extension. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Customers; and that, at all times with respect to Participating Customers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Customers. Such services shall be reasonably accessible to all Participating Customers, shall be available during normal working hours, shall allow Participating Customers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Customers to contact Competitive Supplier during normal business hours (9:00 A.M.- 5:00 P.M. Eastern Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the

Municipality's website which will be available to Participating Customers for general information, comparative pricing, product, and service information, and other purposes.

5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Customer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Municipality for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Customers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Customers, or to comply with any regulation of PSC regarding customer service.

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Customers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Customers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Customers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Customers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Customers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Customers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small commercial as defined by the Distribution Utility) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Customer for

failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Customer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Customers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Customers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual customer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Customers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier shall, at its expense, print and mail one letter or postcard per year to all active Participating Customers, the design of which shall be determined by the Municipality or Program Manager.

In addition, Competitive Supplier agrees that if it communicates with Participating Customers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Manager to include no less than three (3) inserts per year into such communications, provided that the Program Manager or Municipality, where appropriate pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated. Competitive Supplier shall notify Program Manager at least two (2) weeks before a direct communication to Participating Customers is to be mailed. Program Manager shall provide Program General Communications insert file within seven (7) calendar days of receiving such notice.

Competitive Supplier agrees to allow and facilitate the Program Manager to utilize the supplier messages area of the bill for Program communications; provided, however, Program Manager shall provide a written request to Competitive Supplier of not less than fourteen (14) days, which requests details the message to be included on the bill, and any such message shall be subject to Competitive Supplier's approval, such approval not to be unreasonably withheld.

5.8 PARTICIPATING CUSTOMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Customer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Customer lists in an electronic format, secure transfer mode, frequency and format as set out in Exhibit D, subject to non-disclosure agreement for customers who have not requested that their personal information be denied to Program Manager or to Municipality.

5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

5.10 CONSENT

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain

such consent or approval. In the event the Competitive Supplier requests the Municipality's assistance in obtaining such consent or approval and the Municipality anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs, up to the estimated dollar amount, reasonably incurred by the Municipality in connection with such efforts.

ARTICLE 6 ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the PSC Orders and Local Law and may include negotiating the terms and conditions under which Firm Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full-Requirements Power Supply to Participating Customers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2 a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to the PSC Orders and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Customer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality may conduct outreach to the community in addition to the initial program notification letter, which will be delivered at the Competitive Supplier's expense, with a Business Reply Mail insert to allow Eligible Customer to opt out without postage expense. Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;

- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders, including but not limited to the following:

Agreeing to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.

In addition, Program Manager will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued.

- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is verified to be a qualified electricity supplier by the NYISO in the Distribution Utility's service territory and the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA;
- e. Provide the Municipality with timely communications content to implement customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program's implementation;
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities; and
- g. Fulfill any other responsibilities as set forth in this agreement herein.

7.2 PROGRAM MANAGER FEE

Competitive Supplier shall pay Program Manager \$0.001 for each kWh delivered, invoiced and paid for by Participating Customers during the Term ("Program Manager Fee" or "Fee"). The Parties agree that Competitive Supplier will remit the Program Manager Fee to the Program Manager, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Sustainable Westchester, Inc. for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House ("ACH") (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Customer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Manager is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Manager in connection with this ESA shall be borne wholly and completely by Program Manager. Program Manager shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Manager or any employees or agents of Program Manager.

7.5 AUCTION SERVICE FEE

Competitive Supplier shall pay the auction service company, Transparent Energy (“Auction Service Company”), \$0.00015 for each kWh delivered, invoiced and paid for by Participating Customers during the Term (“Auction Service Fee”). The Parties agree that Competitive Supplier will remit the Auction Service Fee to the Program Manager for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

Payment to the Auction Service Company shall be made monthly by ACH to the account indicated by the Auction Service Company, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers. The Auction Service Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Customer during the calendar month prior. For example, for full payments received from Participating Customers in January the Auction Service Fee associated with those payments will be paid by the end of March. If Competitive Supplier has paid a past Auction Service Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due to the Auction Service Company and provide a sufficiently detailed explanation of the error.

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide Firm Full-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA.

8.2 OBLIGATION TO SERVE

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Customers under the Program. Competitive Supplier, except as

explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Customers, regardless of their location or energy needs provided such Participating Customers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 METERING

The Distribution Utility will be responsible for any metering which may be required to bill Participating Customers in accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers.

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Customers at the Point of Sale. In accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers, the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Distribution Utility.

8.4.2 Billing and Payment

Unless otherwise specified in an Exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Customer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Customers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Customers on Default Service. If actual meter date is unavailable, the Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any overcharge or under-charge will be accounted for in the next billing period for which actual meter data is available.

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Customers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier

shall be included on the Participating Customer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Customers' bills. Participating Customers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Customers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE PSC ORDERS

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA, will comply with the applicable provisions of the PSC Orders and any regulations, orders or policies adopted pursuant thereto.

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS

10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agree to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 14-M-0564 and 14-M-0224 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, at least fourteen days prior to the Nominal Start Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Customer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any customer complaints received from a Participating Customer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written

description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

10.3 DISPUTE RESOLUTION

In accordance with the Uniform Business Practices, in the event of a dispute regarding an invoice or Competitive Supplier's service, whether directly or through its Associated Entities, under this ESA, a Participating Customer may initiate a formal dispute resolution process by providing written notice to the PSC. The PSC will assist the Parties in reaching a mutually acceptable resolution. If no such resolution is reached within 40 calendar days of receipt of the formal written notice, any Party may request an initial decision from PSC. Parties may appeal this decision.

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive Supplier agrees that it shall conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees, and will require all Associated Entities to do the same.

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Monthly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with the following monthly reports as shown on Exhibit B attached hereto within 30 days of the end of the month:

1. kWh and counts disaggregated by municipality, utility zone, customer type, rate class, product
2. Add-Drop report with count of transactions for drop categories Moved, Changed Supplier, Opt-out, Other, and add categories of Opt-in and Newly Eligible.

All reports provided under this 12.1 shall be provided in electronic format.

12.1.2 Customer-Related Data

On and after the Effective Date, Competitive Supplier will maintain customer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this Article 12.1.2 shall be grounds for termination under Article 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality's

satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

12.1.3 Standard of Care

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

12.2 POWER SUPPLY REPORT

Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York, including, once finalized by the PSC and/or the New York State Energy Research and Development Authority and available to Competitive Supplier, the creation of separate labels to reflect renewable CCA products within the Competitive Supplier's portfolio, as well as individual municipal renewable purchases within the CCA program.

Unless the Environmental Disclosure Label requirement is waived by PSC, within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current Environmental Disclosure Label required by the PSC of all Competitive Suppliers to be disclosed to their Participating Customers, which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Customers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the appropriate federal court in New York or appropriate state court sitting in the New York county in which the Municipality is located, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Manager ("Indemnified Parties") and the Indemnified Parties' elected officials, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality or its employees or agents, or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality or Program Manager seeks indemnification pursuant to this Article 14, it shall notify Competitive Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

14.4 DUTY TO MITIGATE

Each Party agrees that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of the other Party's performance or non-performance of this ESA.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Municipality as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with the ESA's terms, subject to applicable law, and the Competitive Supplier can and will perform its obligations hereunder to the Municipality in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.
- b) Subject to the conditions set forth in Article 2.4:
 - i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
 - ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
 - iii) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
 - iv) no bankruptcy is pending against it or to its knowledge threatened against it;

- v) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- vi) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

15.2 BY THE MUNICIPALITY

As a material inducement to entering into this ESA, the Municipality hereby represents and warrants to Competitive Supplier as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law, and Municipality will perform its obligations hereunder in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- b) The execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) Municipality has all authorizations from local Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) No bankruptcy is pending or threatened against the Municipality;

15.3 BY THE PROGRAM MANAGER

As a material inducement to entering into this ESA, the Program Manager hereby represents and warrants to Competitive Supplier and Municipality as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law;
- b) The execution, delivery and performance of this ESA are within Program Manager's powers, have been or will be duly authorized by all necessary action;
- c) Program Manager has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) No Bankruptcy is pending or threatened against Program Manager.

ARTICLE 16 INSURANCE

16.1 In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Nominal Start Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. A certificate that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before fourteen days prior to the Nominal Start Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Nominal Start Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

16.3 Competitive Supplier, to the extent required by law, must provide worker's compensation insurance meeting all applicable state and federal requirements.

ARTICLE 17 REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event affects Competitive Supplier and Program Manager and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

17.2 QUALIFYING REGULATORY EVENT

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects

Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

17.3 NEW TAXES

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Customers through applicable monthly invoice(s).

ARTICLE 18 MISCELLANEOUS

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Manager shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Manager in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Customers or other Eligible Customers located within the Municipality, Competitive Supplier agrees to (i) give the Municipality written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality.

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Customer that relies upon Competitive Supplier’s unique knowledge of, or access to, Participating Customers gained as a result of this ESA. For the purposes of this provision, “direct marketing” shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Participating Customer. Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such “direct marketing.”

18.3 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

If to Competitive Supplier:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
40 Green Street
Mount Kisco, NY 10549

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Program Manager changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in Article 18.3.

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

18.6 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages. Additionally, Competitive Supplier shall submit all Participating Customer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98-M-0667.

18.7 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorney's fees and expenses.

18.8 NO JOINT VENTURE

Each Party will perform all obligations under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Municipality and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

18.9 JOINT WORK PRODUCT

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

18.10 COUNTERPARTS

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

18.11 WAIVER

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

18.12 ADVERTISING LIMITATIONS

Competitive Supplier and Municipality agree not to use, whether directly or through any of its Associated Entities, the name of the other Party, or make any reference to the other Party in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the other Party expressly agrees to such usage. Any proposed use of the name of a Party must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. The Municipality acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

18.13 PRESS RELEASES

The Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld. The Parties agree to cooperate in good faith prior to the issuance of any formal press release with

respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

18.14 HEADINGS AND CAPTIONS

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

18.15 SURVIVAL OF OBLIGATION

Termination of this ESA for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

ARTICLE 19 REMEDIES

19.1 GENERAL

Subject to the limitations set forth in Article 19.2 below and Article 4, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

19.2 LIMITATIONS

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party’s rights to seek direct damages or, under Article 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages described in the preceding sentence or other such losses claimed by third- parties.

19.3 DISCLAIMER

COMPETITIVE SUPPLIER MAKES NO WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

//Signatures Follow//

IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below

COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

EXHIBIT A – PART 1 PRICES AND TERMS – STANDARD PRODUCT

Firm Full-Requirements Price by Rate Classification for all Participating Customers located in Con Edison territory commencing service on the first customer meter-read date after [DATE].

Municipality understands that for any supply to Participating Customers the Fixed Price **includes** NY Public Policy Transmission Costs and NY Tier 2 REC Program Costs based on the estimates of such costs for calendar year 2022 that were obtainable by Competitive Supplier and Competitive Supplier will pass through to Participating Customers any future changes, (upward or downward) to such NY Public Policy Transmission Project Costs or NY Tier 2 REC Program Costs, based on changes in such costs during the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year.

“**NY Public Policy Transmission Project Costs**” means costs or charges imposed by the NYISO (including without limitation, Work in Progress charges or other related transmission costs not including charges under NY TOTS Project Costs or Ancillary Services And Other ISO Costs) associated with the development of the transmission facilities under the NYISO’s Public Policy Transmission Planning Process and in compliance with FERC Order No.1000 (Stats. & Regs 31,323 issued July 2011, as may be amended or modified from time to time during the term of this ESA).

“**NY Tier 2 REC Program Costs**” means any costs related to the purchase of Tier 2 eligible renewable energy certificates (“**Tier 2 REC’s**”) associated with the expansion of the Clean Energy Standard to include additional compliance requirements in accordance with the “Order Adopting Modifications to the Clean Energy Standard” in DPS Case 15-E-0302 dated October 15, 2020 (as may be proposed or implemented during the term of this ESA).

The Parties agree and acknowledge that the Fixed Price set forth below **excludes** costs and charges associated with changes to the obligations of New York’s Clean Energy Standard (“CES”), including but not limited to CES Tier 4 program costs as described in the “Order Adopting Modifications to the Clean Energy Standard” in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. In the event that changes to such regulations/orders are finalized, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.

Table 1:

Rate Class	Fixed price per kWh	Fixed price per kWh w GRT payment *
Residential	\$0.0###	\$0.0###
Small Commercial	\$0.0###	\$0.0###

** Villages and cities in Westchester assess Gross Receipts Tax on energy sales at a rate of 1.0101%. This is reflected in the billed rate and remitted to the municipality by supplier as required under 8.4.4.*

Terms for System Supply Service

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date after [DATE] for each Participating Customer and continue until the first customer meter read date after [DATE] (“End Date”) for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer’s first meter read dates after [DATE]. Service shall continue until the first customer meter read date after [DATE] for each Participating Customer.

Clean Energy Standards (“Clean Energy Requirements”): The standard electricity generation mix offered to Participating Customers under the Standard Electricity Product shall meet the minimum Clean Energy Requirements for electric power designated by New York State.

Eligible Customer Opt-Out: Participating Customers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Customers are to provide five (5) business days’ notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Customers to opt-out or terminate service.

Competitive Supplier’s Standard Credit Policy: The Competitive Supplier will not require a credit review for any customer participating in the Program, nor will Competitive Supplier require any customer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Customer and return such customer to Default Service in the event that the customer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier shall serve Newly Opt-out Eligible Customers, as well as Eligible Customers who opt-in to the Program, who enroll or are enrolled into the Program after the first customer meter-read date referred to above at the fixed price in Table 1 above.

EXHIBIT A – PART 2 PRICES AND TERMS – 100% RENEWABLE CLEAN POWER PRODUCT

Firm Full-Requirements Price for 100% Renewable Clean Power Product by Rate Classification for all Participating Customers located in Con Edison territory commencing service on the first customer meter-read date after [DATE].

Municipality understands that for any supply to Participating Customers the Fixed Price **includes** NY Public Policy Transmission Costs and NY Tier 2 REC Program Costs based on the estimates of such costs for calendar year 2022 that were obtainable by Competitive Supplier, and Competitive Supplier will pass through to Participating Customers any future changes, (upward or downward) to such NY Public Policy Transmission Project Costs or NY Tier 2 REC Program Costs, based on changes in such costs during the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year.

“**NY Public Policy Transmission Project Costs**” means costs or charges imposed by the NYISO (including without limitation, Work in Progress charges or other related transmission costs not including charges under NY TOTS Project Costs or Ancillary Services And Other ISO Costs) associated with the development of the transmission facilities under the NYISO’s Public Policy Transmission Planning Process and in compliance with FERC Order No.1000 (Stats. & Regs 31,323 issued July 2011, as may be amended or modified from time to time during the term of this ESA).

“**NY Tier 2 REC Program Costs**” means any costs related to the purchase of Tier 2 eligible renewable energy certificates (“**Tier 2 REC’s**”) associated with the expansion of the Clean Energy Standard to include additional compliance requirements in accordance with the “Order Adopting Modifications to the Clean Energy Standard” in DPS Case 15-E-0302 dated October 15, 2020 (as may be proposed or implemented during the term of this ESA).

The Parties agree and acknowledge that the Fixed Price set forth below **excludes** costs and charges associated with changes to the obligations of New York’s Clean Energy Standard (“CES”), including but not limited to CES Tier 4 program costs as described in the “Order Adopting Modifications to the Clean Energy Standard” in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. In the event that changes to such regulations/orders are finalized, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.

Table 2:

Rate Class	Fixed price per kWh	Fixed price per kWh w GRT payment *
Residential	\$0.0###	\$0.0###
Small Commercial	\$0.0###	\$0.0###

** Villages and cities in Westchester assess Gross Receipts Tax on energy sales at a rate of 1.0101%. This is reflected in the billed rate and remitted to the municipality by supplier as required under 8.4.4.*

Terms for System Supply Service

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date after [DATE] for each Participating Customer and continue until the first customer meter read date after [DATE] (“End Date”) for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of 100% Renewable Clean Power Product shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: 100% Renewable Clean Power Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer’s first meter read dates after [DATE]. Service shall continue until the first customer meter read date after [DATE] for each Participating Customer.

Clean Energy Standard (“Clean Energy Requirements”): The standard electricity generation mix offered to Participating Customers under the Standard Electricity Product shall meet the minimum Clean Energy Requirements for electric power designated by New York State.

100% New York Voluntary EDP Eligible RECs -- This Exhibit A-Part 2 includes a voluntary purchase of Renewable Energy Certificates (“RECs”) which comply with the attribute delivery rules set forth in the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the NY EDP Program that are sourced from NY EDP Eligible Renewable Resources in an amount equal to 100% of the Participating Customers’ electricity usage, in addition to any then-current REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier. In the event that the DPS or other governmental authority determines that a 100% Renewable Clean Power Product may be provided through the voluntary purchase of NY Tier 2 Voluntary RECs in an amount equal to 100% of the Participating Customers’ electricity usage less any then-current Tier 1 REC purchase associated with the Clean Energy Standard requirements applicable to Competitive Supplier in New York, such change shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event. Competitive Supplier anticipates that the RECs provided hereunder will be generated primarily by hydroelectric facilities, but some portion of the RECs may be generated by wind, solar or other facilities, and Competitive Supplier reserves the right to source the RECs from any qualifying NY EDP Eligible Renewable Resource. Each REC represents environmental attributes associated with one MWh of electricity generated by a renewable fuel type defined by NYGATS Operating Rules, dated May 18, 2018, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program. For purposes of this Agreement:

- i. “NY EDP Eligible Renewable Resource” means any electric power generator meeting the NY EDP Program eligibility criteria of a NY renewable energy generating source which comply with the attribute delivery rules set forth in the NYGATS Operating Rules, supporting the NY EDP Program, as of the Effective Date of this Agreement. RECs will be retired for all participants collectively at the Program level.

ii. “NY EDP Program” means the environmental disclosure program administered by the New York State Department of Public Service, through which load serving entities periodically inform their customers of the fuel source, emissions and other characteristics of the electricity resources supplied to them.

Eligible Customer Opt-Out: Participating Customers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Customers are to provide five (5) days’ notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Customers to opt-out or terminate service.

Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any customer participating in the Program, nor will Competitive Supplier require any customer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Customer and return such customer to Default Service in the event that the customer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier shall serve Newly Opt-out Eligible Customers, as well as Eligible Customers who opt-in to the Program, who enroll and are enrolled into the Program after the first customer meter-read date referred to above at the price in Table 2, above.

In the event that New York State institutes a subsidy for CCA purchase of RECs after the signing of this ESA that is applicable to all or any portion of the Competitive Suppliers obligations under this ESA, Competitive Supplier shall pass through the full subsidy to Participating Customers in the form of a rate reduction.

EXHIBIT C - PAYMENT

PROGRAM MANAGER BANK INFORMATION FOR PAYMENTS BY ACH

Bank Name:

Bank Routing Number:

Bank Account Number:

Federal ID:

EXHIBIT D - DATA REQUIREMENTS

In order for program administrators and participants to have visibility into their participation with the program, certain data will need to be exchanged, in a regular format, with regular transmission methods and times.

There are three file formats currently in use for this purpose which must be provided by Competitive Supplier to Program Manager:

1. Newly_Opt-out Eligible_Customer file - Competitive Supplier will obtain this data quarterly from the Utility and the notification mailing is made from the list following procedures described elsewhere in this ESA. The Program Manager requires a matching dataset as defined below in order to perform its duties for customer service during the opt out period.
2. Post-enrollment file – Weekly, and after the Competitive Supplier sends enrollments to the Utility, either at the beginning of this contract or after a Newly Opt-out Eligible Customer opt out period, the Competitive Supplier will send this file to the Program Manager to update its records.
3. Overnight file – basic status update for all transactions occurring since the last overnight file.
4. Commission file - Standard practice for aggregation suppliers.

The abovementioned files should, at minimum, contain the following information:

<u>Newly Opt-out Eligible Customer file</u>	<u>Post-enrollment file</u>
Pre-Enrollment ID Customer Name Service Address Service City State Zip Mailing Address Mail City State Zip Customer Classification Rate Category	Pre-Enrollment ID Utility Account Number Meter Read Cycle Account Start Account End Enrollment Issue/Reason Code Municipality Name Contract Start Contract End Rate Class Annual kWh Capacity Tag Capacity Start Date Capacity End Date Billing Name Billing Address Billing State Billing City Billing Zip Enrollment Date (Contract Start Date) Load Zone

<u>Overnight file</u>	<u>Commission file</u>
PRE-ENROLLMENT ID LDCAcctNo_vc OptCode POD ID acctstatus_c Enroll DtO SUPPLIER ENROLLMENT STATUS Enroll/Drop Code Comment_vc start Date End Date BilledRateChargeAmt EMailAddress_vc Affiliation_vc LDC_vc	Customer Name Service Account Number Invoice Number Contract ID Municipality Customer Class Invoice Date Start Date End Date Earned Date Scheduled Payment Month Usage UDC Code Commission Rate/Amount Commission Payment Lag (Days)

File transfer between the Supplier and Program Manager, or a party designated by Program Manager, shall be by SFTP or other secure mode.

EXHIBIT E - OPTION FOR ALTERNATIVE SUPPLY OF POWER


Competitive Supplier shall provide power to Participating Customers, including through the purchase of REC's, throughout the term of this ESA and from sources selected in Competitive Supplier's own discretion. However, Program Manager desires to build or contract with a third party to supply renewable sources of energy (the "Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Customers. Upon completion of any such Renewable Power Source the Program Manager may offer to sell output from the Renewable Power Source to Competitive Supplier, either directly or through an Associated Entity, under a separate Power Purchase Agreement ("PPA"). Program Manager understands and acknowledges that (i) Competitive Supplier shall have no obligation to enter into a PPA during the term of this ESA; and (ii) if Competitive Supplier agrees to enter into a PPA, then completion of a PPA is contingent upon (without limitation) Competitive Supplier's confirmation (in its sole determination) that (a) the terms are in compliance with all rules, laws and regulations; (b) it has internal senior management approval after completion of financial, credit, legal and operation due diligence; and (c) the Parties have executed an amended ESA to incorporate terms of the PPA. In the event that Competitive Supplier elects not to enter into a PPA as described above and Program Manager enters into a Third Party Agreement, then the terms of this ESA shall remain unmodified and in full force and effect.

If Competitive Supplier elects to enter into a PPA as described above, Competitive Supplier agrees to review a roster of Renewable Power Sources pre-approved by Program Manager and Competitive Supplier who retain a PPA form consistent with the needs of Program Manager and Competitive Supplier, provided, however, that final determination of a Renewable Power Source provider shall be in the sole discretion of Competitive Supplier and may be a source not listed on the roster.

In the event Program Manager identifies output from Renewable Power Source(s) that Program Manager desires to assign to or request that the Competitive Supplier use in the Program, Program Manager will describe whether each product is unit-contingent or smoothed, and Program Manager will describe the projected (if unit contingent) or committed quantity (if smoothed) for RECs, Capacity and/or kWh, including time blocks for the product, if appropriate.

Competitive Supplier and Program Manager will then discuss the best strategy for moving forward, including whether Competitive Supplier desires to solicit offers from the free market for like quantities of power, REC or capacity.

In such case, the Parties agree to negotiate, in a Commercially Reasonable manner, a rate adjustment to Participating Customers to (a) compensate Competitive Supplier (or an Associated Entity) for any losses should Competitive Supplier (or an Associated Entity) need to then sell off any of the original power purchased to supply the Program at a lower price than it purchased it for, or (b) compensate Participating Customers for any gains should Competitive Supplier (or an Associated Entity) then be able to sell off any of the original power purchased to supply the Program at a higher price than it purchased it for. Any such rate adjustment shall only amend or modify the ESA by a written instrument signed by all Parties hereto. For avoidance of doubt, the foregoing does not obligate Competitive Supplier or Program Manager to come to an agreement regarding a rate adjustment.



Westchester Power Program

2022 Program Pause and MOU/Contracting Schedule

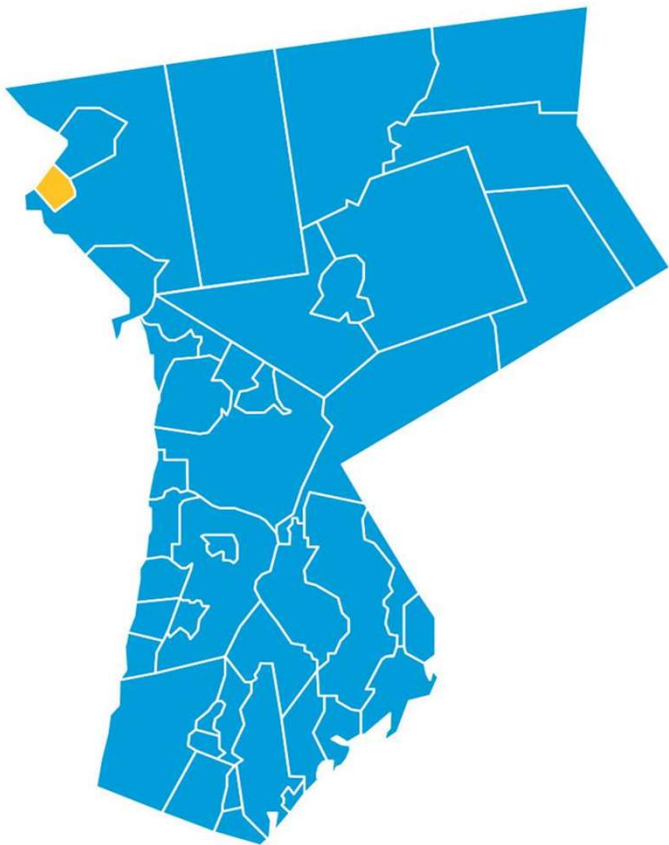
July 13, 2022



WHY ARE WE HERE TODAY?

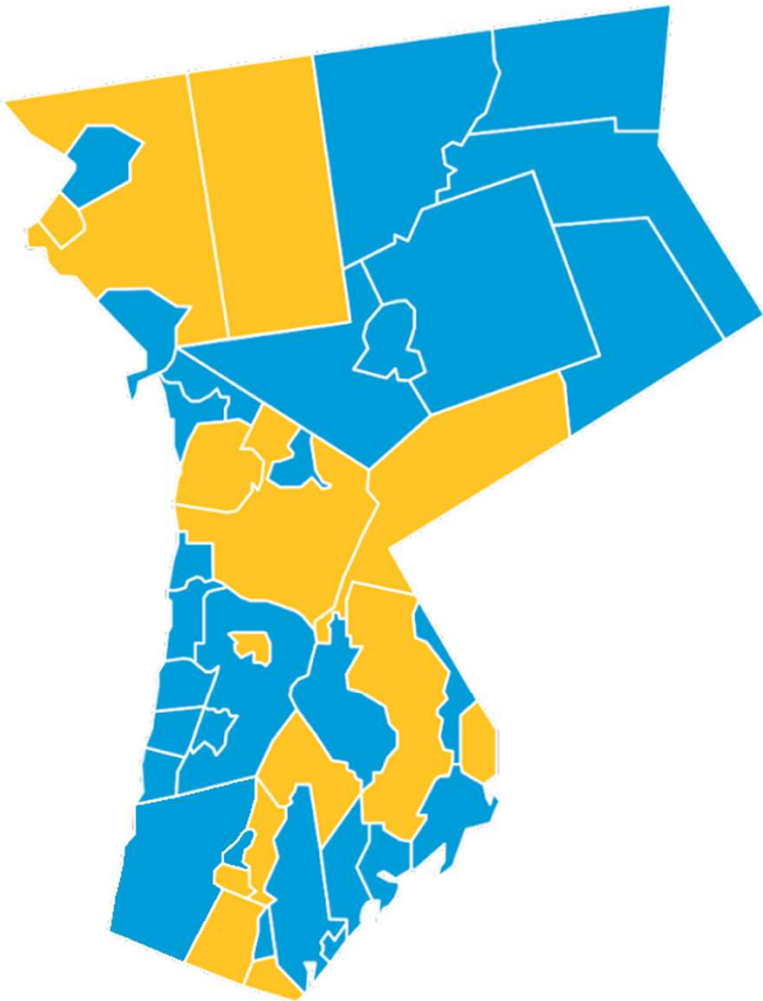
- Two attempts earlier this year to secure a new contract (a short-term extension) thwarted by volatility which saw the market move out of the “Price Not To Exceed” range set in those associated MOUs.
- As a consequence we were not able to maintain continuity in our contracts, and customers are being switched back to Con Edison supply in the interim.
- The Participation MOU has been modified to use standard municipal “lowest responsible bidder” language.

SUSTAINABLE WESTCHESTER



Ardsley	Hastings-on-Hudson	North Castle	Rye Brook
Bedford	Irvington	North Salem	Rye City
Briarcliff Manor	Larchmont	Ossining Village	Rye Town
Bronxville	Lewisboro	Ossining Town	Scarsdale
Cortlandt	Mamaroneck Village	Peekskill	Sleepy Hollow
Croton-on-Hudson	Mamaroneck Town	Pelham Manor	Somers
Dobbs Ferry	Mount Kisco	Pelham Village	Tarrytown
Eastchester	Mount Pleasant	Town of Pelham	Tuckahoe
Elmsford	Mount Vernon	Pleasantville	White Plains
Greenburgh	New Castle	Port Chester	Yonkers
Harrison	New Rochelle	Pound Ridge	Yorktown

And Westchester County itself



WESTCHESTER POWER CCA

MUNICIPAL PARTICIPATION

Ardsley
Bedford
Croton-on-Hudson
Dobbs Ferry
Greenburgh
Hastings-on-Hudson
Irvington

Larchmont
Lewisboro
Mamaroneck Village
Mamaroneck Town
Mount Kisco
New Castle
New Rochelle

North Salem
Ossining Village
Ossining Town
Peekskill
Pelham Village
Pleasantville
Pound Ridge

Rye Brook
Rye City
Sleepy Hollow
Somers
Tarrytown
Tuckahoe
White Plains
Yonkers

29

Municipalities

145,000

Residents and
Small Businesses

WESTCHESTER POWER - A LOCAL SOLUTION

Since 2016, Westchester Power has helped municipalities forge a clean energy future as an aggregator for renewable energy supply

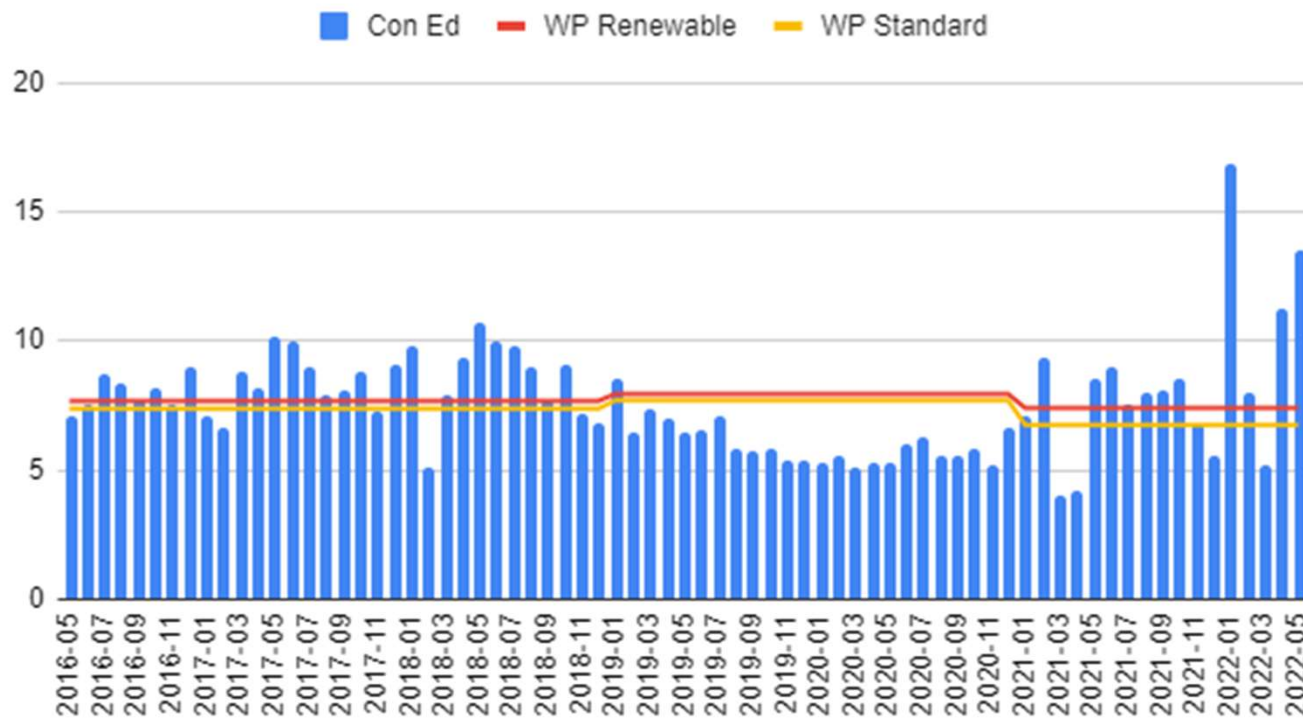
- **COLLECTIVE POWER** Westchester Power is the community-selected default electricity supply option for municipalities. Through wide participation we can negotiate competitive electricity supply contracts for residents and small businesses
- **100% RENEWABLE ENERGY** is made more accessible through this program and allows residents to participate in the clean energy transition directly through their electricity supply choice
- **FIXED-RATE** prices provide stable and predictable cost options for electricity vs the variability of the utility supply
- **COMMUNITY INVESTMENTS** are increased through the participation of residents in this program, enabling the deployment of dynamic sustainability initiatives that directly benefit Westchester communities

WESTCHESTER POWER PROGRAM – ADDITIONAL NOTES

- **OPT-OUT FORMAT** enables the program to fully maximize the buying power of our communities for our supply contracts. You have always had the utility as a default supply option, but with Westchester Power as the community-selected default electricity supply option you now have choices
- **CONSUMER-FRIENDLY** with this program you have the option to participate with no contracts, fees, or penalties for coming or going. You can opt in, out, or change supply choices at any time
- **TWO SUPPLY OPTIONS** the program offers both our 100% Renewable energy as a default for most municipalities, as well as a more cost-effective Standard supply (which is a mixed fuel source)
- **SAVINGS** are **NOT** guaranteed through this program, as we cannot predict what the utility will charge month-to-month. However, our fixed rates provide assurance on what you can expect from our program each cycle and we have historically been competitive with the utility for both of our supply choices

HISTORIC RATES – CON ED TERRITORY

Con Ed - Residential



Current Contract (01/2021 - 05/2022)

Con Ed Average: 8.33 ¢/kWh
 WP 100% Renewable: 7.41 ¢/kWh
 WP Standard: 6.75 ¢/kWh

Rate Averages All-time

Con Ed: 7.6 ¢/kWh
 WP 100% Renewable: 7.71 ¢/kWh
 WP Standard: 7.34 ¢/kWh

MAKING A HUGE IMPACT!



=



or



	METRIC TONS OF CO ₂ MITIGATED	CARS TAKEN OFF THE ROAD FOR 1 YEAR	TREE SEEDLINGS FOR 10 YEARS
Countywide	1,100,000	293,000	18.2 million

PAUSE LETTER TO RESIDENTS



June 10, 2022

WESTCHESTER POWER PROGRAM — NOTIFICATION OF ELECTRICITY SUPPLY OFFERING PAUSE

You are receiving this letter because you are a current participant in the program who will be affected by this temporary pause in our electricity supply offering, starting on Friday July 1, 2022. **YOUR ELECTRICITY WILL NOT BE TURNED OFF**, you will simply be transferred from Westchester Power to Con Edison's default supply. This pause does not mean the program is ending, but rather that there is going to be a gap in service which will resume again later this year.

PAUSE IN SERVICE: Extreme volatility in electricity prices has presented challenges to securing a supply contract that provides the value and stability to participants that the program has delivered these last 6 years. While we continue to work for a new contract, the timing is now such that participants will experience a pause in program supply at the end of this current contract.

WHAT HAPPENS NEXT: Starting in July, you will be transitioned into the Con Edison default electricity supply and be billed for electricity at their variable rate. You will:

1. Receive a notification card from Con Edison in June regarding your impending switch over to their supply
2. Starting in your July billing cycle, you will receive Con Edison's electrical supply and be billed at their monthly rates with no interruption of service, receiving your first bill under that supply in late July/August
3. Ahead of the restart of Westchester Power supply, you will be notified through the mail regarding the new contract terms and have the opportunity to opt out or change supply options should you wish before automatically re-enrolling

KEEPING YOU UPDATED: While we do not yet know the date the electricity supply will restart in your area or what the new rates will be, you will be notified ahead of that resumption once that is established, and we will post updates at www.sustainablewestchester.org/wp/conedterritory

CONTINUED COMMITMENT TO OUR WORK: While the decision to pause the electricity supply offering of the program is a disappointing step in our journey toward building a healthy and sustainable Westchester County, we are resolute in our dedication to this mission. The various other programs of Sustainable Westchester (e.g. Grid Rewards) will continue through this pause and beyond, continuing to provide savings and environmental benefits for residents.

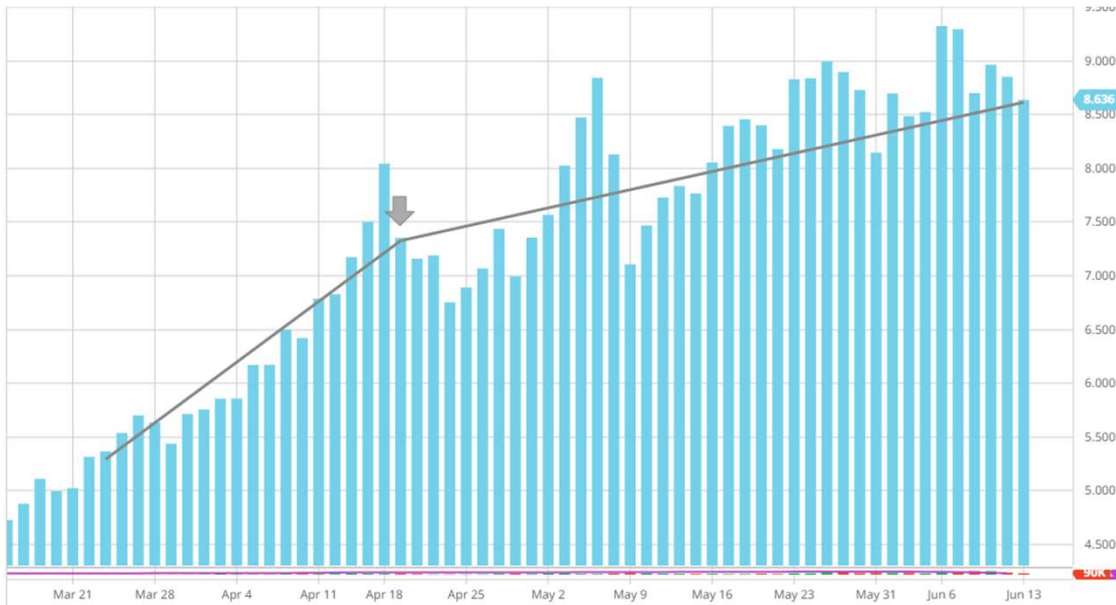


ADDITIONAL CONTEXT

- We have missed the window where a short-term extension might have had some benefit
- We are still working on the “sleeving” procurement model (allowing us to seek wholesale bids), but it will take more time to have this ready for execution
- Near-term pricing is particularly high and volatile, but now longer term contracts have started to look advantageous
- So, we are recommending that we solicit a 1-3 year contract per our normal practice in prior years

ENERGY MARKET SNAPSHOT

Natural Gas Futures Mar-June



AP AP News

[Russia again cuts natural gas exports to European countries](#)

PRAGUE (AP) — Russia reduced natural gas to Europe again Friday, including cutting flows by half to Italy and Slovakia and completely to...

3 days ago



P Politico

[Spiking temperatures could cause more blackouts this ...](#)

... this summer due to extreme weather and volatile gas prices — but ... Federal Energy Regulatory Commission predicts electricity prices...

3 weeks ago



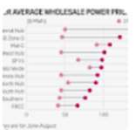
S&P Global

[US summer electricity prices to climb on fuels costs, delivery](#)

...

Power prices are closely tied to the natural gas market, which is often the most expensive generators dispatched to supply power. "We forecast..."

3 days ago



MOVING FORWARD

- We are targeting a fall resumption of the program
- In the meantime, people will return to the Con Edison default electricity supply starting with your first meter-read date on or after July 1st
- We are actively preparing ourselves to hold bid solicitation for electricity supply this summer for a long-term contract
- Upon successfully executing an agreement, we will prepare another mailing to inform participants about the new contract rates and term, providing a 30-day window for you to opt out or change supply options before the program launches again
- While the pause is a difficult and untimely step we must take, we are steadfast in returning with a strong electricity supply offering that brings the great value of our program back to residents


***As a note, if during the pause period one decides to sign an agreement with an ESCO for electricity supply, they would no longer be automatically enrolled back into Westchester Power**

**WESTCHESTER POWER:
ENABLES INNOVATIVE SOLUTIONS**

GridRewards: Grid Efficiency through Demand Response

- **More efficient grid management = elimination of “peaker” plants**
- Learn about your energy habits, reduce usage & lower your carbon footprint
- Sign-up for the GridRewards app & connect to your Con Edison account
 - View your energy usage, get savings tips & more...
 - Take simple energy actions during GridReward events (periods of high demand on the electricity grid – Summer 2022)
- **EARN CASH & MAKE A POSITIVE ENVIRONMENTAL IMPACT!***

*average cash reward is \$150



Sign up for GridRewards™

Earn up to 20% of your annual electricity bill in cash rewards and reduce your carbon footprint!

Download GridRewards app
Available on the App Store | Get it on Google Play

Get an alert when it's time to save electricity

Reduce your electricity usage

We send you a check



CITY COUNCIL AGENDA

DEPT.: Fire Department

DATE: July 7, 2022

CONTACT: Michael A, Kopy, Commissioner of Public Safety

AGENDA ITEM: Consideration of proposed Rules and Regulations of the City of Rye Fire Department:

- Policy #202 – Electronic mail
- Policy #203 – Department Directives
- Policy #301 – Response Time Standards
- Policy #705 – Personal Communication Devices
- Policy #706 – Photography and Electronic Imaging
- Guideline #1012 – Emergency Recall
- Guideline #1014 – Conduct and Behavior
- Guideline #1015 – Member Speech, Expression and Social Networking
- Guideline #1028 – Personal Appearance

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: Approval of the listed policies.

IMPACT: Environmental Fiscal Neighborhood Other:

Enhancement of the operational effectiveness of the Department.

BACKGROUND: The proposed policies have been reviewed by the Commissioner and the Professional Firefighters Local 2029.

See attached memo and new policies.

Michael A. Kopy
Public Safety Commissioner
Rye, New York 10580



CITY OF RYE

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E-mail: mkopy@ryeny.gov
<http://www.ryeny.gov>

Department of Public Safety

Memorandum

To: Greg Usry, City Manager
From: Michael A. Kopy, Public Safety Commissioner
Date: 7/06/2022
Re: Fire Department – Lexipol Policy

Reference the captioned subject, the attached policies are being forwarded for review. The city contracted with Lexipol prior to my arrival to develop and establish policies for the fire department based on nationwide standards and best practices, while also incorporating state and federal laws. I have reviewed the policies submitted by Lexipol with a committee at the police department (including the Professional Firefighters Local 2029) and made the appropriate changes where necessary.

I believe that the adoption of the policies below is in the best interest of public safety in the City of Rye and I recommend that it be forwarded to the City Council for action. Below is a brief overview of the policies that were submitted by Lexipol.

I will be available to answer questions when these are reviewed.

Policy 202 – Electronic Mail

The purpose of this policy is to establish guidelines for the proper use and application of the Electronic mail (email) system provided by the Department.

Policy 203 – Department Directives

The purpose of this policy is to establish a process to make immediate changes to department policy. The Rye Fire Department will, as necessary, issue Departmental Directives that will immediately modify or change and supersede the sections of this manual to which they pertain.



Policy 301 – Response Time Standards

The purpose of this policy is to establish turnout, travel and response time goals and objectives for emergency incidents.

Policy 705 – Personal Communication Devices

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

Policy 706 – Photography and Electronic Imaging

The purpose of this policy is to authorize department members to utilize photography and electronic imaging to document non-incidents and incidents while also protecting the privacy of citizens and ensuring department compliance with the mandates of the Health Insurance Portability and Accountability Act (HIPAA). Records management and HIPAA restrictions are covered in detail under separate sections in this Policy Manual.

Guideline 1012 – Emergency Recall

The purpose of this policy is to define the procedure to be used by the Rye Fire Department to recall off-duty employees. The policy also establishes the procedures to be used to recall off-duty employees, in accordance with state and federal laws and collective bargaining agreements.

Guideline 1014 – Conduct and Behavior

The purpose of this policy is to provide guidelines to prevent activities or behaviors that may lead to disciplinary actions or dismissal.

Guideline 1015 – Member Speech, Expression and Social Networking

This policy is intended to address issues associated with member use of social networking sites and to provide guidelines for the regulation and balancing of member speech and expression with the needs of the Department.

Guideline 1028 – Personal Appearance

In order to project uniformity and neutrality, members shall maintain their personal hygiene and appearance to ensure a professional image appropriate for this department and for their assignment.



Electronic Mail

202.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of the electronic mail (email) system provided by the Department.

202.2 POLICY

Rye Fire Department members shall use email in a professional manner in accordance with this policy.

202.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices or networks. Every member is to understand and accept that there is no expectation of privacy in that all email is subject to New York State Freedom of Information Law (Public Officer Law § 85 et seq.).

202.4 RESTRICTED USE

Messages transmitted over the email system are restricted to official business activities, or shall only contain information that is essential for the accomplishment of business-related tasks or for communications that are directly related to the business, administration or practices of the Department.

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive, harassing or any other inappropriate messages on the email system is prohibited and may result in discipline.

Email messages addressed to the entire department are only to be used for official business-related items that are of particular interest to all users. In the event that a member has questions about sending a particular email communication, the member should seek prior approval from his/her supervisor.

It is a violation of this policy to transmit a message under another member's name or email address or to use the password of another to log into the system unless directed to do so by a supervisor. Members are required to log off the network or secure the workstation when the

Rye Fire Department

Policy Manual

Electronic Mail

computer is unattended. This added security measure will minimize the potential misuse of a member's email, name or password. Any deviation from this policy may be approved by the Public Safety Commissioner or designee.

202.5 EMAIL RECORD MANAGEMENT

Email may, depending upon the individual content, be a public record under New York State's Freedom of Information Law (Public Officers Law § 85 et seq.) and must be managed in accordance with the established records retention schedule and in compliance with state law.

The Records Access Officer shall ensure that email messages are retained and recoverable as outlined in the Records Management Policy.

Departmental Directives

203.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a process to make immediate changes to department policy. The Rye Fire Department will, as necessary, issue Departmental Directives that will immediately modify or change and supersede the sections of this manual to which they pertain.

203.2 POLICY

It is the policy of the Rye Fire Department to make changes to policy and procedure as it deems necessary. The establishment of Departmental Directives is a management right but employee participation may be sought in the development of those policies. It is the policy of the Department to comply with any meet-and-confer requirements between labor groups and authorized department representatives.

203.3 RESPONSIBILITIES

The Public Safety Commissioner or designee shall issue all Departmental Directives.

All department officers and/or supervisors shall be responsible for communicating Departmental Directives to all members under their command and/or direct supervision.

Departmental Directives will be rescinded upon incorporation into this manual.

All Departmental Directives shall be reviewed periodically to authenticate or determine if they are currently applicable to the mission of the Department.

Response Time Standards

301.1 PURPOSE AND SCOPE

The purpose of this policy is to establish turnout, travel and response time goals and objectives for emergency incidents.

301.1.1 DEFINITIONS

Definitions related to this policy include:

Dispatch processing time - The time elapsed between receipt of the alarm or telephone call and the dispatch of emergency response units.

Response time - The time elapsed between the dispatch center receiving the first notification of the alarm and the arrival of the first emergency response unit. Response time combines dispatch processing, turnout and travel times.

Travel time - The time elapsed between the emergency response unit beginning travel to the emergency and when the emergency response unit arrives.

Turnout time - The time elapsed between 60 Control notifying firefighters of the emergency and when the emergency response unit begins travel.

301.2 POLICY

It is the policy of the Rye Fire Department to document all department response times to emergency incidents and establish response time baselines and performance objectives.

301.3 PERFORMANCE OBJECTIVES

Response times should be measured at 90 percent of fractile time and reported against an established department Standards of Cover document, if available.

Performance objectives may include:

- (a) One minute or less for dispatch processing time.
- (b) One minute 20 seconds or less for turnout time
- (c) Four minutes or less for the arrival at a fire suppression incident.

301.4 EVALUATIONS AND ANNUAL REPORT

The Department shall annually evaluate its level of service, deployment delivery and response time objectives. The evaluation shall be based on data relating to level of service, deployment and the achievement of each response time performance objective in the geographic area of the jurisdiction. A report will be prepared in February for Public Safety Commissioner.

Personal Communication Devices

705.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued or funded by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs) and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

705.2 POLICY

The Rye Fire Department allows members to utilize department-issued or funded PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair member safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or off-duty for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory staff.

705.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any PCD issued by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities.

The Department reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department, including any department-issued PCD or personally owned PCD that has been used to conduct department-related business. This includes records of all keystrokes or Web-browsing history made on the PCD. The fact that access to a database, service or website requires a username or password will not create an expectation of privacy if it is accessed through department PCDs or networks. It should be

Rye Fire Department

Policy Manual

Personal Communication Devices

clear that there is no expectation of privacy with regards to any PCD, computer, computer network, software, communication device either developed now or in the future.

705.4 DEPARTMENT-ISSUED PCD

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue or fund a PCD for the member's use to facilitate on-duty performance. Department-issued or funded PCDs may not be used for personal business either on- or off-duty unless authorized by the Career Captain or the authorized designee. Such devices and the associated telephone number, if any, shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

Unless a member is expressly authorized by the Career Captain or the authorized designee for off-duty use of the PCD, the PCD will either be secured in the workplace at the completion of duty or will be turned off when leaving the workplace.

705.5 PERSONALLY OWNED PCD

Members may carry a personally owned PCD while on-duty, subject to the following conditions and limitations:

- (a) Permission to carry a personally owned PCD may be revoked if it is used contrary to provisions of this policy.
- (b) The Department accepts no responsibility for loss of or damage to a personally owned PCD. If a member chooses to carry a PCD while on duty, they accept all responsibility for the device.
- (c) The PCD and any associated services shall be purchased, used and maintained solely at the member's expense.
- (d) The device should not be used for work-related purposes except in exigent circumstances. Members will have a reduced expectation of privacy when using a personally owned PCD if it is used for the workplace and have no expectation of privacy with regard to any department business-related communication. The member will report the use and circumstances surrounding it to the Career Captain by end of shift.
 - 1. Members may use personally owned PCDs on-duty for routine administrative work as authorized by the Career Captain. Any data or information captured or transmitted from a PCD shall be considered property of the Rye Fire Department. Any photos, data, and other information shall not be transmitted, shared, copied, or exchanged without the prior permission of the Career Captain.
- (e) The device shall not be utilized to record or disclose any department business-related information, including photographs, video or the recording or transmittal of any information or material obtained or made accessible as a result of employment or appointment with the Department, without the express authorization of the Career Captain or the authorized designee.

Rye Fire Department

Policy Manual

Personal Communication Devices

- (f) All work-related documents, emails, photographs, recordings or other public records created or received on a member's personally owned PCD should be transferred to the Rye Fire Department no later than the end of the member's shift and deleted from the member's PCD as soon as reasonably practicable.

Except with prior express authorization from their supervisors, members are not obligated or required to carry, access, monitor or respond to electronic communications using a personally owned PCD while off-duty. If a member is in an authorized status that allows for appropriate compensation consistent with policy or existing collective bargaining agreements, or if the member has prior express authorization from his/her supervisor, the member may engage in department business-related communications. Should members engage in such approved off-duty communications or work, members entitled to compensation shall promptly document the time worked and communicate the information to their supervisors to ensure appropriate compensation. Members who independently document off-duty department-related business activities in any manner shall promptly provide the Department with a copy of such records to ensure accurate record keeping.

705.6 USE OF PCD

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) A PCD shall not be carried in a manner that allows it to be visible while in uniform, unless it is in an approved carrier.
- (b) All PCDs in the workplace shall be set to silent or vibrate mode.
- (c) A PCD may not be used to conduct personal business while on-duty, except for brief personal communications. Members shall endeavor to limit their use of PCDs to authorized break times, unless an emergency exists.
- (d) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid or in lieu of regular radio communications. The use of a PCD during any emergency operation is strictly prohibited unless prior authorization is given by Career Lieutenant.
- (e) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Career Captain or the authorized designee, may result in discipline.
- (f) Members will not access social networking sites for any purpose that is not official department business.
- (g) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

Rye Fire Department

Policy Manual

Personal Communication Devices

705.7 USE WHILE DRIVING

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Firefighters operating emergency vehicles whether in emergency mode or not, shall not use PCDs. (Vehicle and Traffic Law § 1225-c; Vehicle and Traffic Law § 1225-d).

Except in an emergency, members who are operating vehicles that are not equipped with lights and siren shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use (Vehicle and Traffic Law § 1225-c; Vehicle and Traffic Law § 1225-d). Hands-free use should be restricted to business-related calls or calls of an urgent nature.

Photography and Electronic Imaging

706.1 PURPOSE AND SCOPE

The purpose of this policy is to authorize department members to utilize photography and electronic imaging to document non-incidents and incidents while also protecting the privacy of citizens and ensuring department compliance with the mandates of the Health Insurance Portability and Accountability Act (HIPAA). Records management and HIPAA restrictions are covered in detail under separate sections in this Policy Manual.

This policy establishes legal ownership of all photographs and electronic images collected by department members; establishes the parameters for the types of incidents, subjects and activities that may be photographed or electronically imaged; and establishes restrictions on the use of such photographs and electronic images.

706.2 POLICY

It is the policy of the Rye Fire Department to authorize members to utilize photography and electronic imaging to document incidents and department activities that are subject to compliance with specific regulations, conditions, restrictions and guidelines. Barring exceptional circumstances, personal communication devices must not be used. If so reports should be made to Career Captain and any images should be recorded then deleted.

The use of photography or electronic imaging of medical patients, injured victims or other people who are medically evaluated or treated by department members must also comply with the requirements of HIPAA.

The Rye Fire Department shall respect the privacy rights established in the state and federal constitutions.

706.3 OWNERSHIP AND COMMERCIAL USE OF PHOTOGRAPHS AND ELECTRONIC IMAGES

All photographs and electronic images taken by department members while on-duty or off duty in a non public area or acting in an official capacity are the sole property of the Department and may not be sold, transferred for commercial use, bartered or otherwise distributed for profit by any member of the Department without the express prior approval of the Public Safety Commissioner or designee Career Captain (17 USC § 201). This includes images, audio, or other data captured by personal communication devices in an area of a fire scene that would not readily be open to the public (i.e inside a fire lane) regardless of location where photo was secured. Members are reminded to act in the best interest and not to discredit the Department.

706.4 AUTHORIZED USE OF PHOTOGRAPHY AND ELECTRONIC IMAGING

Rye Fire Department

Policy Manual

Photography and Electronic Imaging

706.4.1 NON-INCIDENT EVENTS

Photography and electronic imaging may be utilized by department members for non-incident events, including:

- (a) Documentation of department training events, exercises, lectures, classes or activities, and all fire academy-related activities.
- (b) Documentation of internal department events and activities, such as promotional ceremonies, member recognition or award presentations, meetings, seminars, workshops and other activities involving department members.
- (c) Documentation of public events, such as safety seminars, fire station open house events, Fire Prevention education events and activities, school safety presentations and club or service organization events.
- (d) Documentation of all department vehicles, apparatus, tools and equipment, facilities and other department-owned property.
- (e) Creation and maintenance of a photo/image bank depicting all department members.
- (f) Documentation of all buildings, structures, facilities, infrastructure components, landmarks and recreational areas within the department's jurisdiction for later use in disaster mitigation, recovery and cost-recovery efforts.
- (g) Documentation of any condition, activity or event related to the department's code enforcement responsibilities.
- (h) Documentation of inspections, code compliance activities or any other activity of Fire Prevention.
- (i) Unless prohibited elsewhere in this policy, documentation of any department activity for future use in training.
- (j) For any other purpose authorized by the Career Captain or Career Lieutenant.

706.4.2 INCIDENT-RELATED EVENTS

Photography and electronic imaging may be utilized by department members at incident scenes, including:

- (a) Documentation of the conditions on arrival and during suppression activities at any fire incident.
- (b) Documentation of fire, smoke, water, structural collapse or any other damage or conditions resulting from any fire or fire-related event.
- (c) Documentation of people at the scene of a fire or a fire-related incident for the purpose of future investigation.
- (d) Documentation of anything of evidentiary value found at a fire or incident scene where any type of investigation may be initiated.
- (e) Documentation of the location, position, trauma, injuries or any other factor of investigative interest related to deceased victims at a fire or fire-related incident or other incidents.

Rye Fire Department

Policy Manual

Photography and Electronic Imaging

- (f) Documentation of the condition of vehicles, apparatus, bicycles or other items involved in collisions, accidents, entrapments or other rescue or medical events.
- (g) Documentation of the extrication of trapped individuals in any rescue situation.
- (h) Documentation of the cause, location, extent, severity and nature of traumatic injuries of patients at the scene. These images may be transferred to the receiving physician, nurse or other authorized representative who assumes medical care for the patient.
- (i) Documentation of all aspects of any incident involving hazardous materials.
- (j) Documentation of severe weather events, including any damage, injuries or fatalities caused by such events.
- (k) Documentation of any other event, situation or activity as deemed appropriate and necessary by the Incident Commander of any event.

706.5 PROHIBITED USE OF PHOTOGRAPHY OR ELECTRONIC IMAGING

Department members are prohibited from using photography or electronic imaging except as permitted in this policy.

Prohibited use of photography or electronic imaging shall include, but is not limited to:

- (a) Photographs and/or electronic images may not be taken, transmitted or used in violation of any HIPAA regulation.
- (b) Photographs and/or electronic images may not be taken, transmitted or used for personal purposes.
- (c) Unless requested by the receiving hospital or controlling medical authority or deemed necessary for the future treatment of the patient, no photographs or electronic images should be taken inside a private residence during a non-traumatic medical aid incident.
- (d) Unless requested by the receiving hospital or controlling medical authority or deemed necessary for the treatment of the patient, no photographs or electronic images should be taken of a patient under 18 years of age during a medical aid response.
- (e) Unless requested by the receiving hospital or controlling medical authority or deemed necessary for the future treatment of the patient, no photographs or electronic images depicting patient genitalia or the exposed breasts of female patients should be taken by department members.
 - 1. Unless directed by Lieutenant or reasonable fire officer, no photographs or electronic images should be taken of any patient. All members shall make all responsible effort to protect the dignity and privacy of any individual alive or deceased associated with any location being photographed. Photographs and other information collected should be limited in scope to the incident at hand.
- (f) Unless requested by the receiving hospital or controlling medical authority or deemed necessary for the future treatment of the patient, no photograph or electronic image should be taken of a patient being treated by department members if the person expresses or indicates that he/she does not wish to be photographed. In the event that the need arises to take a photograph or electronic image of a medical patient against the patient's wishes, the medical need for taking the image will be explained

Rye Fire Department

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Photography and Electronic Imaging

to the patient with a witness present. Details regarding the need for the photograph or electronic image, the explanation provided to the patient and the identity of the witness present shall be included in a patient care report and/or incident report for the response.

Emergency Recall

1012.1 PURPOSE AND SCOPE

The purpose of this policy is to define the procedure to be used by the Rye Fire Department to recall off-duty employees. The policy also establishes the procedures to be used to recall off-duty employees, in accordance with state and federal laws and collective bargaining agreements.

1012.1.1 DEFINITIONS

Definitions related to this policy include:

Automatic aid - Apparatus and firefighters who are dispatched automatically by agreement between fire departments, communities or fire districts.

Mutual aid - Apparatus and firefighters who are dispatched, upon request, by the responding fire department. Mutual aid is defined by a signed contractual agreement between the Rye Fire Department and neighboring jurisdictions.

1012.2 POLICY

It is the policy of the Rye Fire Department to provide resources at the scene of an emergency to reasonably provide for the safety of the employees working at the scene, and to ensure adequate resources are available for additional emergency calls. In some instances, this may require the emergency recall of employees as well as the use of mutual aid.

1012.3 PROCEDURES

The Career Captain, Career Lieutenant or Incident Commander (IC) may initiate an emergency recall by providing County Control (60 Control) or other designated resource with brief information regarding the emergency, where members are to report for duty and the name or names of personnel required.

1012.3.1 TRIGGERING INCIDENTS

The types of incidents that may require the initiation of an emergency recall include, but are not limited to:

- One major incident affecting a localized or widespread area.
- Mutual Aid being given to other departments
- Two or more incidents causing a high demand for resources at different locations.
- Numerous incidents causing a peak demand on the entire resource system.
- Any time designated by the Career Captain or the authorized designee.

1012.3.2 COUNTY CONTROL (60 CONTROL) RESPONSIBILITIES

The Career Captain or the authorized designee should be responsible for developing and implementing an emergency recall procedure that complies with state and federal laws and

Rye Fire Department

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Emergency Recall

collective bargaining agreements. Dispatch or the other designated resource should follow the established procedure when implementing an emergency recall.

1012.3.3 FIREFIGHTER RESPONSIBILITIES

Firefighters should reply to an emergency recall immediately or provide notification within 10 minutes with their status and estimated time of arrival. They will report for duty with their personal protective equipment. When Mutual Aid is being given to other departments the Milton FF reporting to Head Quarters will have the following responsibilities:

- Notify Harrison that they are on Temporary Stand By
- Verify that 60 Control has initiated an I Page
- Initiate Call Tree to verify staff response
- When Head Quarters is fully staffed (4 FF's) notify Harrison FD to stand down

1012.3.4 EXCEPTIONS

Members may not refuse an emergency recall notice. Firefighters who receive an emergency recall notification and are under the influence of any impairment, such as medications or alcohol, should advise the caller of the impairment and should not report for duty.

1012.4 OTHER RESOURCES

If sufficient resources cannot be assembled by an emergency recall, the Career Lieutenant or Member in Charge shall request mutual aid until adequate resources are in the City of Rye.

Conduct and Behavior

1014.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to prevent activities or behaviors that may lead to disciplinary actions or dismissal.

1014.2 POLICY

It is the policy of this department that its members strive to attain the highest professional standard of conduct and discharge their duties in a courteous and professional manner.

1014.3 PROFESSIONAL CONDUCT

All members should be governed by the ordinary and reasonable rules of behavior observed by law-abiding and self-respecting citizens, and should conduct themselves at all times in such manner as to reflect favorably on the Department. Conduct unbecoming of a member shall include that which discredits the Department or the person as a member of the Department or which impairs the operation or efficiency of the Department or its members.

All members should conduct themselves in a manner that will not impair the good order and discipline of the Department. Members should not, while on-duty, indulge in hazing or bullying; offensive, obscene or uncivil language; verbal or physical altercations or threats thereof; or conduct which might cause injury to another person.

All members of the Department should be familiar with the expected standard of behavior, both on- and off-duty.

1014.4 INTERACTION WITH THE PUBLIC

In the performance of their duties, members should be courteous to the public and tactful. They should control their tempers, should exercise reasonable patience and discretion, and should not engage in any argumentative discussions even when provoked.

In the performance of their duties, members should not use coarse, violent, profane, or insolent language or gestures, and should not express prejudice or discrimination.

1014.5 COURTESY TO MEMBERS

Members should be courteous and respectful in their relations with all members of the Department and public. Members shall not use coarse, violent, profane, or insolent language or gestures, and shall not express prejudice or discrimination.

1014.6 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Unless required by law or policy, discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, economic status, cultural group, veteran status, marital status, and any other classification or status protected

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Conduct and Behavior

by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful, is prohibited.

1014.7 CONFORMANCE TO LAWS

Members shall obey all laws of the United States and of any state and local jurisdiction or elsewhere on or off duty, in which the member is present.

1014.8 DEROGATORY OR MALICIOUS STATEMENTS

Members should not be a party to any malicious gossip, report, or activity which would tend to disrupt department morale or bring discredit to the Department or any member thereof. Member questions concerning department policy, activities, officers, and/or safety issues shall be submitted by official written communication to the member's immediate supervisor.

1014.9 POLITICAL ACTIVITY

Members will not engage in political activities of any kind while on-duty. Members are also prohibited from engaging in any political activity off-duty while wearing any uniform items or equipment that could identify them as members of the Department.

1014.10 SEXUAL ACTIVITY

Members will not engage in any sexual activity while on-duty. This includes use of any electronic device to communicate or receive messages, photos, or any other content of a sexual or provocative nature.

1014.11 ILLEGAL GAMBLING

Members will not engage or participate in any form of gambling at any time while on-duty. This includes accessing gaming websites from computers or any electronic device, whether department-issued or owned by the member.

1014.12 GIFTS AND GRATUITIES

Members shall conform and comply with the City Code of Ethics regarding the acceptance of money, tangible or intangible personal property, or any service, gratuity, favor, entertainment, hospitality, loan, promise, or any other thing of value from any person, business, or organization that is doing business with, or seeking to do business with, the Department or the City.

If it may reasonably be inferred that the person, business, or organization seeks to influence the actions of a member or seeks to affect the performance of a member while on-duty, the incident should be immediately reported to the next level supervisor.

1014.13 OFFERS OF DONATIONS AND GIFTS OF THE HEART

Members who are approached with monetary donations following major disasters shall direct the person or entity to the Public Safety Commissioner for instruction on proper ways to donate.

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Conduct and Behavior

At no time should a member accept any monetary donation from the public. If a citizen offers a gift of a non-monetary nature, such as food or product, the gift shall be placed in an area of the station or office to be shared by all members.

At no time shall a member consider a gift of the heart as a personal present.

1014.14 ABUSE OF POSITION

Members should not use their official positions, official identification cards, or badges to avoid the consequences of illegal acts or for other non-work-related personal gain. Members shall not lend to another person their identification cards or badges, or permit their identification cards or badges to be photographed or reproduced without the approval of the Public Safety Commissioner.

Members should not authorize the use of their names, photographs, or official titles that identify them as department members (e.g., in connection with testimonials or advertisements of any commodity or commercial enterprise) without the approval of the Public Safety Commissioner.

1014.15 PUBLIC STATEMENTS AND APPEARANCES

Members should not address public gatherings, appear on radio or television, prepare any articles for publication, act as correspondents to a newspaper or periodical, or release or divulge investigative information or information on any other matter of the Department while presenting themselves or in any way identifying themselves as representing the Department, without the approval of the Public Safety Commissioner.

Member Speech, Expression and Social Networking

1015.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with member use of social networking sites and to provide guidelines for the regulation and balancing of member speech and expression with the needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit, about matters of public concern, such as misconduct or corruption.

Members are encouraged to submit in writing to their supervisor regarding any questions arising from the application or potential application of this policy.

1015.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, and use of all Internet services, including the Web, email, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites, and visible postings in public places.

1015.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this department. Due to the nature of the work and influence associated with the fire profession, it is necessary that members of this department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Rye Fire Department will carefully balance the individual member's rights against the department's needs and interests when exercising a reasonable degree of control over its members' speech and expression.

1015.3 SAFETY

Members should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of the Rye Fire Department members, such as posting personal information in a public forum, can result in compromising a member's home address or family ties. Members should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any member, a member's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

- Disclosing the address of a fellow firefighter.

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Member Speech, Expression and Social Networking

- Otherwise disclosing where another firefighter can be located off-duty.

1015.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the department's safety, performance and public-trust needs, the following is prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit, on a matter of public concern):

- (a) Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Rye Fire Department or its members.
- (b) Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Rye Fire Department and tends to compromise or damage the mission, function, reputation or professionalism of the Rye Fire Department or its members. Examples may include:
 1. Statements that indicate disregard for the law of the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
 4. Other expressions that a reasonable person finds to not be in the best interest of the Fire Department or the City of Rye.
- (c) Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the member as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- (d) Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the members of the Department.
- (e) Speech or expression that is contrary to the canons of the Firefighters' Code of Ethics as adopted by the Rye Fire Department.
- (f) Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department for financial or personal gain, or any disclosure of such materials without the express authorization of the Career Captain or the authorized designee.
- (g) Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of department logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Rye Fire Department on any personal or social networking or other website or web page, without the express authorization of the Career Captain.
- (h) Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or department-owned, for personal purposes while on-duty, except in the following circumstances:

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Member Speech, Expression and Social Networking

1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
2. During authorized breaks; however, such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Members must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the member (e.g., social or personal website).

1015.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

Although members are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit, members may not represent the Rye Fire Department or identify themselves in any way that could be reasonably perceived as representing the Rye Fire Department in order to do any of the following, unless specifically authorized by the Public Safety Commissioner:

- (a) Endorse, support, oppose or contradict any political campaign or initiative
- (b) Endorse, support, oppose or contradict any social issue, cause or religion
- (c) Endorse, support or oppose any product, service, company or other commercial entity
- (d) Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website

Additionally, when it can reasonably be construed that a member, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group), is affiliated with this department, the member shall give a specific disclaiming statement that any such speech or expression is not representative of the Rye Fire Department.

Members retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit, on political subjects and candidates at all times while off-duty. However, members may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Members are also prohibited from directly or indirectly using their official authority to coerce, command or advise another member to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1015.4.2 POLITICAL ACTIVITY

No member shall be prohibited from engaging in political activity, unless otherwise prohibited by law, in violation of department policy or any time a member is on-duty or in uniform.

Members shall not be coerced or required to engage in political activity (Labor Law § 201-d).

Member Speech, Expression and Social Networking

1015.5 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any department technology system.

The Department reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Department, including the department email system, computer network or any information placed into storage on any department system or device. This includes records of all keystrokes or Web-browsing history made at any department computer or over any department network. The fact that access to a database, service or website requires a username or password will not create an expectation of privacy if it is accessed through department computers, electronic devices or networks.

1015.6 CONSIDERATIONS

In determining whether to grant authorization of any speech or conduct that is prohibited under this policy, the factors that the Career Captain or the authorized designee should consider include:

- (a) Whether the speech or conduct would negatively affect the efficiency of delivering public services.
- (b) Whether the speech or conduct would be contrary to the good order of the Department or the efficiency or morale of its members.
- (c) Whether the speech or conduct would reflect unfavorably upon the Department.
- (d) Whether the speech or conduct would negatively affect the member's appearance of impartiality in the performance of his/her duties.
- (e) Whether similar speech or conduct has been previously authorized.
- (f) Whether the speech or conduct may be protected and outweighs any interest of the Department.

1015.7 TRAINING

Subject to available resources, the Department should provide training regarding member speech and the use of social networking to firefighters and supervisors.

Personal Appearance Standards

1028.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality, members shall maintain their personal hygiene and appearance to ensure a professional image appropriate for this department and for their assignment.

The procedures contained herein are intended to promote uniformity of the members of the Department by addressing specific grooming items. However, nothing herein shall limit the department's ability to address any other grooming or personal appearance issues that may be deemed improper for members of the Department.

1028.2 POLICY

It is the policy of the Rye Fire Department that all members meet required personal hygiene and grooming standards while on-duty or conducting official business.

1028.3 GROOMING STANDARDS

The following appearance standards shall apply to all members except those whose current assignment would deem them not appropriate or where the Public Safety Commissioner or the authorized designee has granted an exception.

1028.3.1 PERSONAL HYGIENE

All members must maintain proper personal hygiene. Examples of improper personal hygiene include but are not limited to dirty fingernails, bad breath, body odor, and dirty or unkempt hair. Any member who has a condition due to a protected category (e.g., race, physical disability) which affects any aspect of personal hygiene covered by this policy may qualify for an accommodation and should report any need for an accommodation to the Department of Human Resources.

1028.3.2 HAIR

The hairstyle of all members shall be neat in appearance. Hairstyles that extend below the top edge of the uniform collar should be secured in a tightly wrapped braid or ponytail. Hair should be worn in a manner that allows the member to engage in all firematic activities.

1028.3.3 MUSTACHES

A neatly trimmed mustache may be worn. Mustaches shall not extend below the corners of the mouth or beyond the natural hairline of the upper lip so at no point it will interfere with firematic duties.

1028.3.4 SIDEBURNS

Sideburns shall not extend below the bottom of the ear and shall be trimmed and neat.

1028.3.5 BEARDS AND GOATEES

Beards, goatees, or any hair on the chin or on the jawline is prohibited.

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Personal Appearance Standards

1028.3.6 FACIAL HAIR

Facial hair other than sideburns, mustaches, and eyebrows shall not be worn, unless authorized by the Career Captain or the authorized designee.

1028.3.7 FINGERNAILS

Fingernails extending beyond the tip of the finger can pose a safety hazard to members working in the field. For this reason, fingernails shall be trimmed so that no point of the nail extends beyond the tip of the finger.

1028.3.8 JEWELRY AND ACCESSORIES

No jewelry or personal ornaments shall be worn by members on-duty on any part of the uniform or equipment, except those authorized within this manual. Members should be mindful of wearing jewelry that can become snagged or caught during performance of rescue or fire suppression duties.

- Necklaces or jewelry worn around the neck shall not be visible above the shirt collar.
- It is recommended that members refrain from wearing rings while assigned to rescue or fire suppression.

1028.4 TATTOOS

Tattoos, brands, or mutilations that are inappropriate, as determined at the sole discretion of the Public Safety Commissioner, must be covered. Inappropriate marks may include but are not limited to marks that exhibit or advocate discrimination; marks that promote or express gang, supremacist, or extremist group affiliation; and marks that depict or promote drug use, sexually explicit acts, or other obscene material.

1028.5 BODY PIERCING OR ALTERATION

Except for a single-stud pierced earring worn in the lobe of each ear, no body piercing shall be visible while any member is on-duty or representing the Department in any official capacity.

Alteration to any area of the body visible in any authorized uniform or attire that is a deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes but is not limited to:

- (a) Tongue splitting or piercing.
- (b) The complete or trans-dermal implantation of any material other than hair replacement.
- (c) Abnormal shaping of the ears, eyes, nose, or teeth.
- (d) Branding or scarification.

1028.6 RELIGIOUS ACCOMMODATION

Any request for accommodation for any subsection of this policy must be made in writing directly to Public Safety Commissioner. The religious beliefs and needs of department members should be reasonably accommodated. Requests for religious accommodation should generally be granted

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Personal Appearance Standards

unless there is a compelling security or safety reason and denying the request is the least restrictive means available to ensure security or safety. The Career Captain should be advised any time a request for religious accommodation is denied.

1028.7 EXEMPTIONS

Members who seek cultural (e.g., protective hairstyles) or other exemptions to this policy that are protected by law should generally be accommodated (Executive Law § 296). Members with exemptions may be ineligible for assignments if the individual accommodation presents a security or safety risk. The Career Captain should be advised any time a request for such an accommodation is denied or when a member with a cultural or other exemption is denied an assignment based on a safety or security risk. Exemptions shall be granted on a case by case basis as applicable by law and in the best interest of the City of Rye.



CITY COUNCIL AGENDA

DEPT.: Police Department

DATE: July 7, 2022

CONTACT: Michael A, Kopy, Commissioner of Public Safety

AGENDA ITEM: Consideration of proposed revisions of the Rules and Regulations of the City of Rye Police Department: Policy #324 Media Relations

FOR THE MEETING OF:
July 13, 2022

RECOMMENDATION: Approval of the listed policy.

IMPACT: Environmental Fiscal Neighborhood Other:
Enhancement of the operational effectiveness of the Department.

BACKGROUND: The proposed revision of the following policy updates the Department's procedures:

Policy #324 – Media Relations

This policy provides guidelines for the release of official department information to the media. It also addresses coordinating media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

A copy of the proposed policy is attached. It has been provided to the Rye Police Association for review pursuant to the provisions of the collective bargaining agreement.

See attached.

Michael A. Kopy
Public Safety Commissioner
Rye, New York 10580



CITY OF RYE

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Department of Public Safety

Memorandum

To: Greg Usry, City Manager
From: Michael A. Kopy, Public Safety Commissioner
Date: 7/06/2022
Re: Police Department – Policy 324 Media Relations

Reference the captioned subject, the attached policy is being forwarded for review.

I believe that the adoption of the policy below is in the best interest of public safety in the City of Rye and I recommend that it be forwarded to the City Council for action. Below is a brief overview of the policies that were submitted by Lexipol.

I will be available to answer questions when these are reviewed.

Policy 324 – Media Relations

This policy provides guidelines for the release of official department information to the media. It also addresses coordinating media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.



Media Relations

324.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines for the release of official department information to the media. It also addresses coordinating media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

324.2 POLICY

Best Practice

It is the policy of the Rye Police Department to protect the privacy rights of individuals, while releasing non-confidential information to the media regarding topics of public concern. Information that has the potential to negatively affect investigations will not be released.

324.3 RESPONSIBILITIES

Best Practice

The ultimate authority and responsibility for the release of information to the media shall remain with the Commissioner of Public Safety. In situations not warranting immediate notice to the Commissioner of Public Safety and in situations where the Commissioner of Public Safety has given prior approval, Division Commanders, Tour Supervisors and designated Public Information Officers (PIOs) may prepare and release information to the media in accordance with this policy and applicable laws regarding confidentiality.

324.4 PROVIDING ADVANCE INFORMATION

Best Practice

To protect the safety and rights of department members and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an arrest or search warrant, should not be disclosed to the media, nor should media representatives be invited to be present at such actions except with the prior approval of the Commissioner of Public Safety. This includes deliberate exposure of a person in custody to members of the media for purposes of photography or video.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception, the Commissioner of Public Safety will consider, at a minimum, whether the release of information or the presence of the media would unreasonably endanger any individual or prejudice the rights of any person or is otherwise prohibited by law.

324.5 MEDIA REQUESTS

Best Practice

Media Relations

Any media request for information or access to a law enforcement incident shall be referred to the PIO, or if unavailable, to the first available supervisor. Prior to releasing any information to the media, members shall consider the following:

- (a) At no time shall any member of this department make any comment or release any official information to the media without prior approval from a supervisor or the PIO.
- (b) In situations involving multiple agencies or government departments, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this department.
- (c) Under no circumstance should any member of this department make any comment to the media regarding any law enforcement incident not involving this department without prior approval of the Commissioner of Public Safety. Under these circumstances the member should direct the media to the agency handling the incident.

324.6 ACCESS

Best Practice

Authorized media representatives shall be provided access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities as required by law.

Access by the media is subject to the following conditions:

- (a) The media representative shall produce valid media credentials that shall be prominently displayed at all times while in areas otherwise closed to the public.
- (b) Media representatives should be prevented from interfering and may be removed for interfering with emergency operations and criminal investigations.
 - 1. Based upon available resources, reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through the PIO or other designated spokesperson.
- (c) Media interviews with individuals who are in custody should not be permitted without the approval of the Commissioner of Public Safety and the express written consent of the person in custody.
- (d) No member of this department who is under investigation shall be subjected to media visits or interviews without the consent of the involved member.

324.6.1 CRITICAL OPERATIONS

Best Practice

Media Relations

A critical incident or tactical operation should be handled in the same manner as a crime scene, except the media should not be permitted within the inner perimeter of the incident, subject to any restrictions as determined by the supervisor in charge. Department members shall not jeopardize a critical incident or tactical operation in order to accommodate the media. All comments to the media shall be coordinated through a supervisor or the PIO.

324.6.2 TEMPORARY FLIGHT RESTRICTIONS

Federal

Whenever the presence of media or other aircraft pose a threat to public or member safety or significantly hamper incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Tour Supervisor. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration (FAA) should be contacted (14 CFR 91.137).

324.7 CONFIDENTIAL OR RESTRICTED INFORMATION

State

It shall be the responsibility of the PIO to ensure that confidential or restricted information is not inappropriately released to the media (see the Records Maintenance and Release and Personnel Records policies). When in doubt, authorized and available legal counsel should be consulted prior to releasing any information.

Restricted information includes, but is not limited to:

- (a) Information that identifies or relates to the arrest and disposition of a juvenile delinquent (Family Court Act § 301.2; Family Court Act § 381.3).
- (b) Information concerning the arrest and disposition of a youthful offender, or a youth apparently eligible for youthful offender status, shall not be released without written consent of the Family Court (CPL § 720.15).
- (c) Information concerning incidents involving persons whose identities are classified as private or confidential under state law (i.e., sex crime victims).
- (d) Identifying information concerning deceased individuals.
 1. Information may be released upon verification of the decedent's identity when notification has been made to the decedent's family, and the release is approved by a supervisor.
- (e) Information contained in the personnel record of any member, unless otherwise specifically allowed by law.
- (f) Criminal history information.
- (g) Information that would tend to endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation.

Media Relations

- (h) Information pertaining to pending litigation involving this department unless authorized by the Commissioner of Public Safety.
- (i) Information obtained in confidence.
- (j) Any information that is otherwise privileged or restricted under state or federal law.

324.7.1 EMPLOYEE INFORMATION

State

The identities of officers involved in shootings or other critical incidents may only be released to the media upon the consent of the involved officer or upon a formal request filed.

Any requests for copies of related reports or additional information not contained in the information log (see the Information Log section in this policy), including the identity of officers involved in shootings or other critical incidents, shall be referred to the PIO.

All such requests must be processed in accordance with the Records Maintenance and Release Policy. Requests should be reviewed and fulfilled by the Records Access Officer, or if unavailable, the Tour Supervisor or the authorized designee. Such requests will be processed in accordance with the provisions of the Records Maintenance and Release Policy, public records laws, and the New York State Freedom of Information Law (Public Officers Law § 87).

324.8 RELEASE OF INFORMATION

Best Practice

The Department may routinely release information to the media without receiving a specific request. This may include media releases regarding critical incidents, information of public concern, updates regarding significant incidents or requests for public assistance in solving crimes or identifying suspects. This information may also be released through the department website or other electronic data sources.

324.8.1 INFORMATION LOG

Best Practice

The Department will maintain a daily information log of significant law enforcement activities. Log entries shall only contain information that is deemed public information and not restricted or confidential by this policy or applicable law. Upon request, the log entries shall be made available to media representatives through the Tour Supervisor.

The daily information log will generally include:

- (a) The date, time, location, case number, type of crime, extent of injury or loss, and names of individuals involved in crimes occurring within this jurisdiction, unless the release of such information would endanger the safety of any individual or jeopardize the successful completion of any ongoing investigation, or the information is confidential (e.g., juveniles or certain victims).
- (b) The date, time, location, case number, name, birth date and charges for each person arrested by this department, unless the release of such information would endanger

Media Relations

the safety of any individual or jeopardize the successful completion of any ongoing investigation or the information is confidential (e.g., juveniles).

- (c) The time and location of other significant law enforcement activities or requests for service with a brief summary of the incident.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 7, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Authorization for City Manager to enter into a professional contract with an engineering firm to provide technical assistance to the City regarding new blasting and mechanical rock removal legislation. Services for a cost not to exceed \$20,000 will be paid for by City Council funds.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council authorize the City Manager to enter the agreement and use the funds from the City Council budget.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The City of Rye is currently in the process of updating its existing laws regarding rock removal and blasting. As part of that process, the City requires the assistance of a professional to provide guidance and technical support to address a number of concerns such as noise, vibration, best blasting practices, rock removal technologies, viable mitigation strategies and the potential impact regulations may have on future construction activities in the City.



CITY COUNCIL AGENDA

DEPT.: City Departments

DATE: July 7, 2022

CONTACT: Greg Usry, City Manager

AGNDA ITEM: Resolution to declare certain City equipment as surplus.

FOR THE MEETING OF:
July 13, 2022

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, the City has been provided with a description of equipment identified as being obsolete or will become obsolete during 2022, and,

WHEREAS, the City recommends that said equipment be declared surplus, now, therefore, be it

RESOLVED, that said equipment is declared surplus, and, be it further

RESOLVED, that authorization is given to the various departments to donate their inventory or to sell or dispose of said equipment in a manner that will serve in the best interests of the City.

IMPACT: Environmental Fiscal Neighborhood Other

BACKGROUND: The Police Department has provided the attached memo regarding an outdated copier.

The Boat Basin would like to surplus abandoned moorings that are currently being stored at the Marina.

Rye TV would like to surplus an unsable monitor.

Lt. Michael Anfuso
Detective Division
21 McCullough Place
Rye, New York 10580



CITY OF RYE

Tel: (914) 967-1234
Fax: (914) 967-8867
E-mail: manfuso@ryeny.gov
<http://www.ryeny.gov>

Police Department

Memorandum

To: Greg Usry, Rye City Manager
From: Lt. Michael Anfuso, Rye Police Department
Date: 7/6/2022
Re: Surplus Equipment

In accordance with the City of Rye Surplus Policy and Procedures, The City of Rye Police Department would like to dispose of the following outdated item and have the Council approve it as surplus marked for destruction.

ITEM BROKEN AND REPLACED

XEROX WORK CENTRE 3550

Serial Number – VMA646738



Rodrigo Paulino
Boat Basin Supervisor
650 Milton Rd
Rye, New York 10580



Tel: (914) 967-2011
E-mail: Rpaulino@ryeny.gov
<http://www.ryeny.gov>

Boat Basin

Memorandum

To: Greg Usry, City Manager
From: Rodrigo Paulino, Boat Basin Supervisor
Date: 7/6/2022
Re: Mooring Surplus

The Boat Basin would like to surplus abandoned moorings that are currently being stored at the Marina.

Five of these illegal & abandoned moorings were impounded on 5/25/22 by a licensed mooring contractor in the Manursing Island area of Rye waters. We have held on to these moorings for over 30 days and no one has come forward in order to claim them.

Six additional moorings were impounded on 6/28/22 by a licensed mooring contractor in the Manursing Island area, we will hold on to these moorings for at least 30 days in order to give the owners a chance to come forward and claim them.

The City hired a contractor to remove these abandoned & illegal moorings. All unclaimed moorings will be sold at auction after the 30 days period in order to try and recover some of the expenses back that was used to pay the mooring contractor. If you have any questions or concerns, please feel free to contact me at any time.

[Type here]

Nicole Levitsky
City Communications
1051 Boston Post Road
Rye, New York 10580

Tel: (914) 967-7242
E-mail: nlevitsky@ryeny.gov
<https://www.ryeny.gov>



CITY OF RYE

Inter-Office Memorandum

To: Greg Usry, City Manager

From: Nicole Levitsky, City Communications

Date: July 6, 2022

Re: Equipment Surplus

I respectfully request that the City Council declare this item as surplus so that we may properly dispose of it. The equipment is no longer functional.

JVC Monitor DT-V17L2DU

Please reach out to me if you have any questions or concerns.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: June 8, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution consenting to the appointment of Mr. John B. Colangelo to the Emergency Medical Services Committee as the Village of Port Chester community representative.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council approve the appointment.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC). Section 3A of the Inter-Municipal Agreement, Establishes community representatives from each of the participating municipalities be proposed by the Corps and ratified by each of the municipalities for a 3-year term. The City of Rye community representative has one more year on his term.

See attached resolution proposing the community representative for the Village of Port Chester.

June 14, 2022

RESOLUTION

**CONSIDERING THE APPOINTMENT OF MR. JOHN B. COLANGELO
TO THE EMERGENCY MEDICAL SERVICES COMMITTEE**

WHEREAS, the Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC); and

WHEREAS, pursuant to Section 3A of the Inter-Municipal Agreement establishes community representatives from each of the participating municipalities to be proposed by the Corps and ratified by each of the municipalities; and

WHEREAS, in a letter dated June 2, 2022 from Kenny Barton, Administrator, John B. Colangelo has been recommended by the Corp as the community representative of the Village of Port Chester; and

WHEREAS, on June 6, 2022 the Board of Trustees of the Village of Port Chester ratified the appointment of Mr. John B. Colangelo to the Emergency Medical Services Committee by resolution

NOW, THEREFORE BE IT RESOLVED, that the Board of Trustees hereby approves the appointment of Mr. John B. Colangelo to the Emergency Medical Services Committee as the Community Representative of the Village of Port Chester.



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: June 8, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Resolution consenting to the appointment of Mr. Michael Borelli to the Emergency Medical Services Committee as the Village of Rye Brook community representative.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the Council approve the appointment.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC). Section 3A of the Inter-Municipal Agreement, Establishes community representatives from each of the participating municipalities be proposed by the Corps and ratified by each of the municipalities for a 3-year term. The City of Rye community representative has one more year on his term.

See attached resolution proposing the community representative for the Village of Rye Brook

On a motion made by Trustee Heiser and seconded by Trustee Fischer the following resolution was adopted.

RESOLUTION

**CONSIDERING THE APPOINTMENT OF THE RYE BROOK COMMUNITY REPRESENTATIVE
TO THE
EMERGENCY MEDICAL SERVICES COMMITTEE**

WHEREAS, the Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC); and

WHEREAS, pursuant to Section 3A of the Inter-Municipal Agreement establishes community representatives from each of the participating municipalities to be proposed by the Corps and ratified by each of the municipalities; and

WHEREAS, in a letter dated December 6, 2021 from Scott T. Moore, EMS Administrator, Mr. Michael Borelli has been recommended by the Corp as the community representative of the Village of Rye Brook.

NOW, THEREFORE BE IT RESOLVED, that the Board of Trustees hereby approves the appointment of Mr. Michael Borelli to the Emergency Medical Services Committee as the Community Representative of the Village of Rye Brook for a three (3) year term that began on June 1, 2021.

TRUSTEE EPSTEIN	ABSENT
TRUSTEE FISCHER	AYE
TRUSTEE HEISER	AYE
TRUSTEE KLEIN	ABSENT
MAYOR ROSENBERG	AYE

State of New York
County of Westchester
Village of Rye Brook } ss:

I hereby certify that this is the Resolution adopted by the Board of Trustees of the Village of Rye Brook which was duly passed by said Board on December 14, 2021

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the Village of Rye Brook, this 16th day of December 2021



Village Clerk



CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: July 1, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Consideration of a request by the Westchester Triathlon Committee for use of city streets on Sunday, September 18, 2022 from 7:00 a.m. to 6:00 p.m. for their annual Westchester Triathlon.

FOR THE MEETING OF:

July 13, 2022

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Westchester Triathlon Committee is requesting the Council approve the use of city streets on Sunday, September 18, 2022 from 7:00 a.m. to 6:00 p.m. for their annual Westchester Triathlon. The requestor has been in contact with the Rye Police Department regarding the event and will provide the appropriate insurance certificate to the City Clerk's office.

See attached request from Eric Opdyke, Race Director.

May 28 Salute | June 3-5 New England

July 9 Williamsburg | July 24 Montclair

----- Forwarded message -----

From: **Eric Opdyke** <eric.opdyke@rev3tri.com>

Date: Mon, Jun 20, 2022 at 4:00 PM

Subject: Westchester Triathlon Proposed September 17-18, 2022 - Request for Permission

To: Craig, Scott J. <scraig@ryepd.ryeny.gov>, Maryanne Veltri <mveltri@portchesterny.com>, Unknown <JGreer@harrison-ny.gov>, Unknown <MDiLauria@harrison-ny.gov>, Sgt. Spizzirri, M <MSpizzirri@vpcpd.com>, Robert J. Falk <rfalk@ryepd.ryeny.gov>, Meade, Jeffrey <jmeade1@northwell.edu>, Roderick, Abby <ARoderick@northwell.edu>, Adam Harvey <aah5@westchestergov.com>, Chief Gregory Austin <gaustin@ryebrook.org>, emsadm2 <emsadm2@aol.com>

Dear Triathlon Stakeholders,

I am requesting your permission to use your roadways for our annual charity triathlon event. We have been on hiatus for the last 2 years and with some normalcy back in place we are ready to return with your support. As you know this is a big undertaking that can't happen without your support.

For all towns outside of Rye, the bike portion takes place on Sunday September 18th. Saturday's events are all inside Playland, City of Rye, Westchester County, and Rye Town Park.

I am requesting an email of support as soon as you can get approval from your respective towns because this is necessary for our NYS-DOT extensive permit process.

Attached is the route we are considering which is basically the same as it has been in previous years. <https://ridewithgps.com/routes/30298887>

The run course is only in the City of Rye: <https://ridewithgps.com/routes/2211492>

I will be sending certificates of insurance as soon as I receive them.

Thank you on behalf of the entire Westchester Triathlon Committee. Please let me know if you have any questions. There is a chance some of my contacts have changed so if there is a new point of contact please forward to them or let me know.

Thanks!!

Eric Opdyke

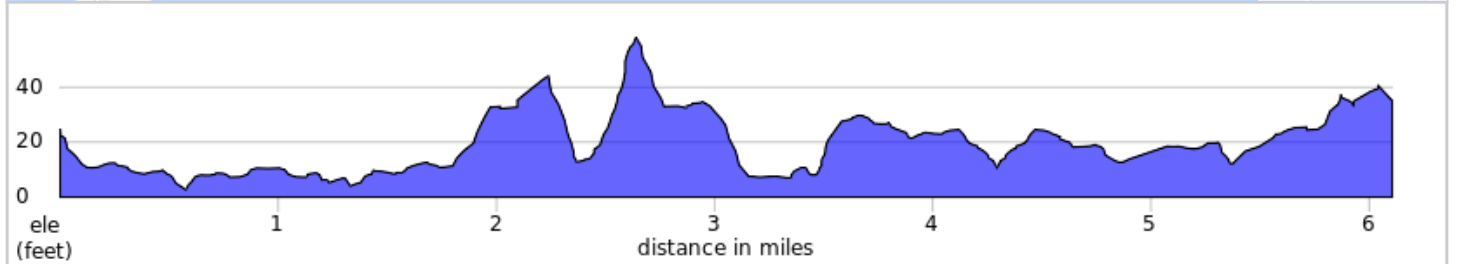
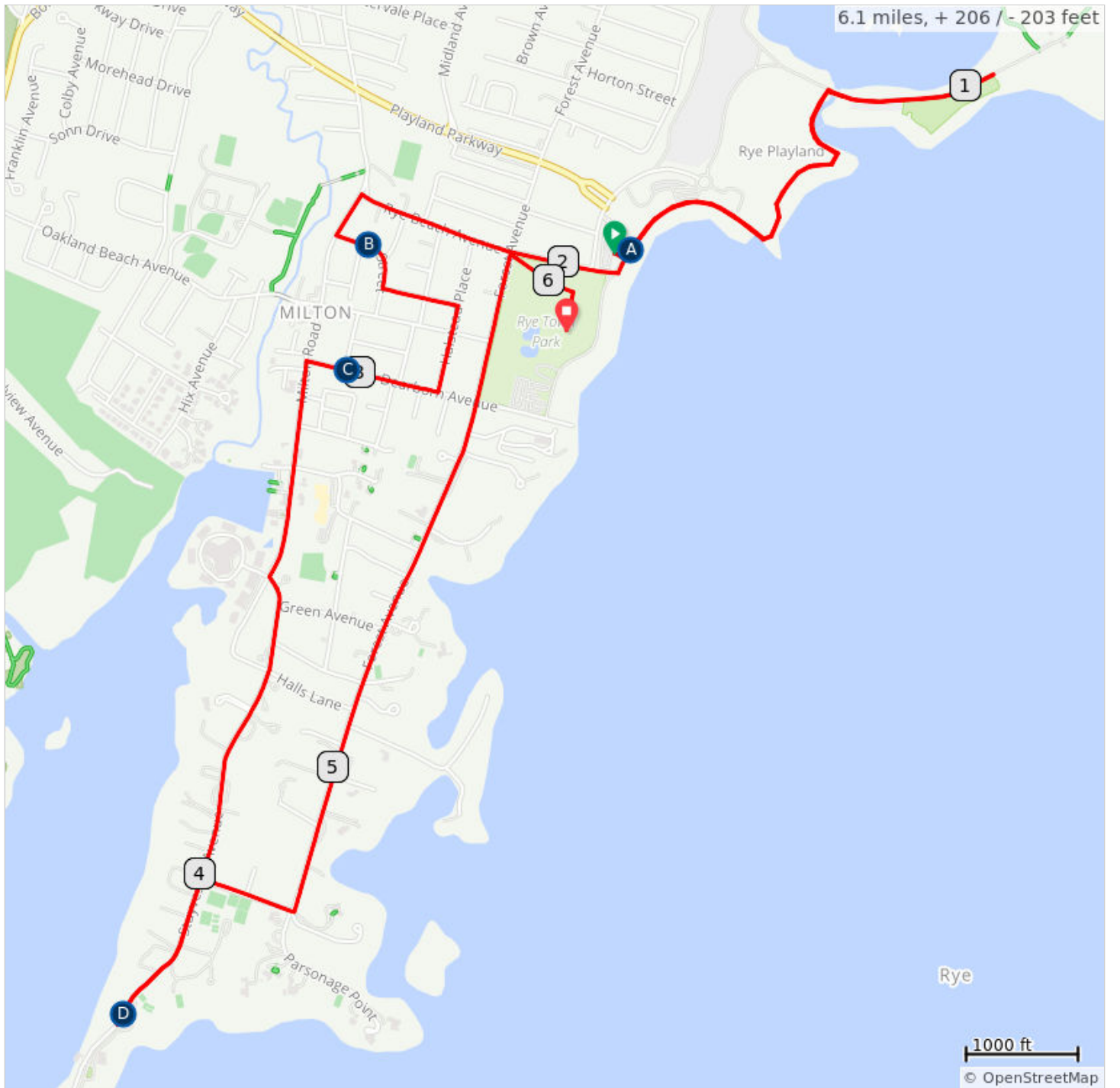
Westchester Triathlon

203-981-6340

2019 Westchester Run



A.	Water Station	C.	Water Station
B.	Water Station	D.	Water Station

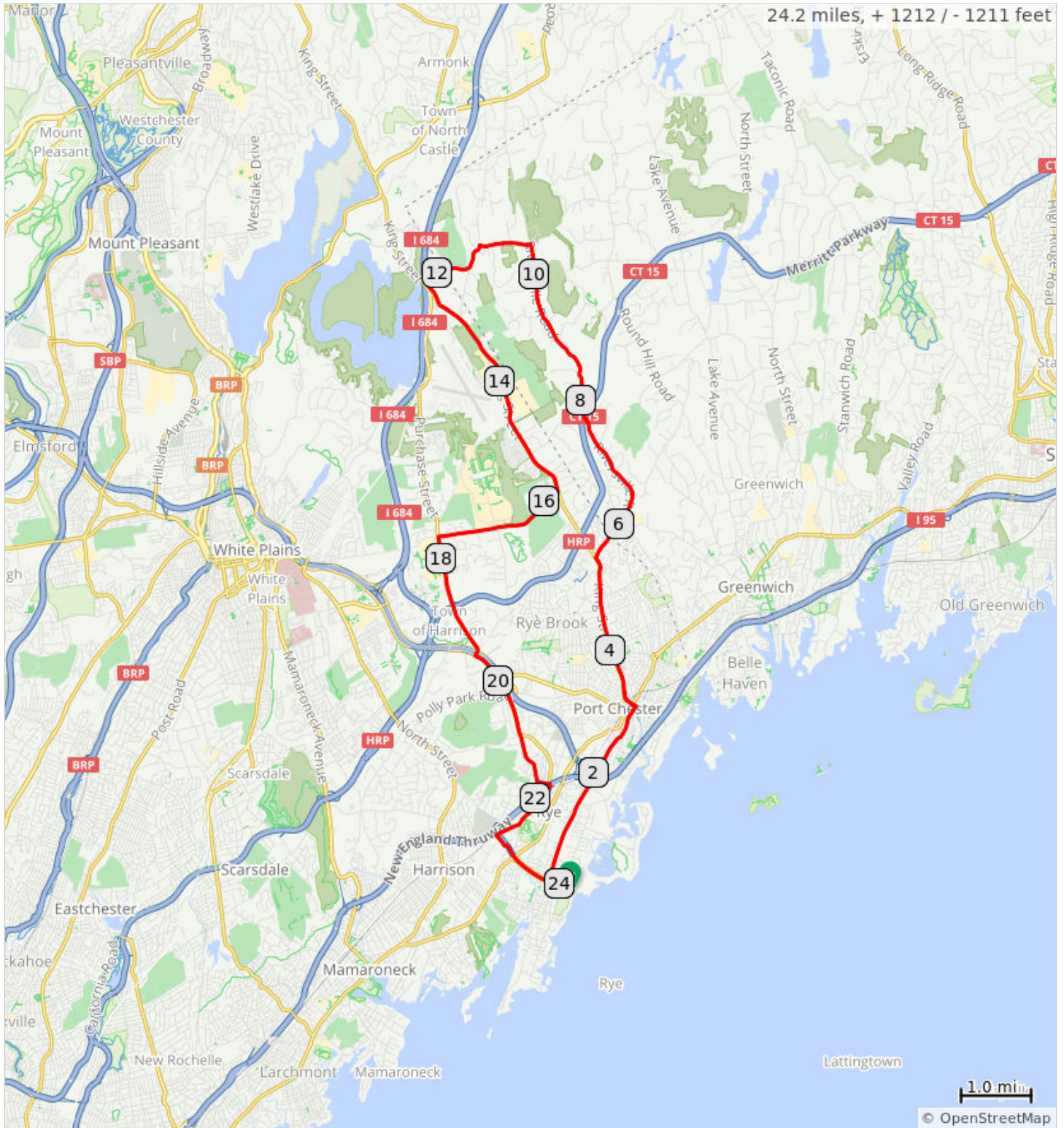


2019 Westchester Run

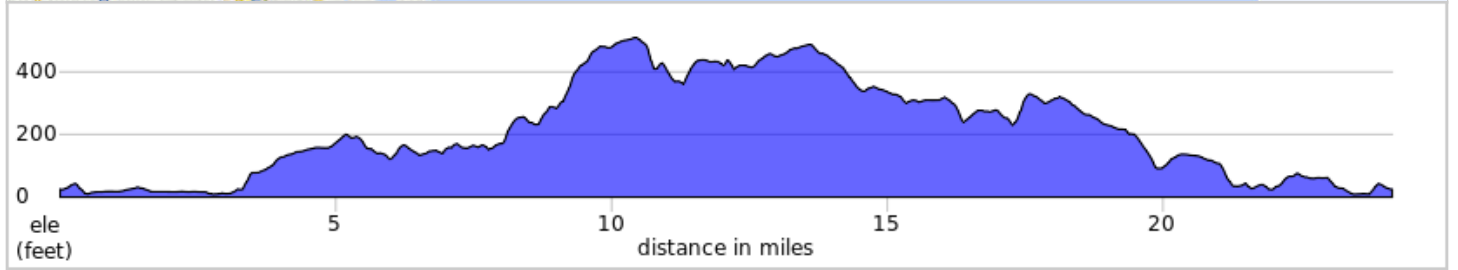
Dist	Type	Note
0.0	📍	Start of route
2.4	←	L onto Milton Rd
2.4	←	L onto Hill St
2.6	←	L onto Ormond Pl
2.9	→	R onto Dearborn Ave
3.5	←	L onto Stuyvesant Ave
4.6	→	R onto Van Wagenen Ave
4.7	←	L onto Forest Ave
6.1	📍	End of route

6.1 miles. +170/-152 feet

2022 Westchester Bike



24.2 miles, + 1212 / - 1211 feet



2022 Westchester Bike

Dist	Type	Note
0.0	📍	Start of route
0.0	←	L to stay on Playland Pkwy
0.3	→	R onto 72/Midland Ave
2.7	↑	Continue straight onto Don Bosco Pl
2.7	↑	Continue onto Waterfront Pl
2.9	↑	Continue onto Abendroth Ave
3.2	←	L onto N Main St
3.2	→	R onto Willett Ave
5.4	→	R onto Glenville St
5.9	→	R to stay on Glenville St
6.0	←	L onto Riversville Rd
10.5	←	L onto John St
11.2	←	L onto Bedford Rd
11.5	→	R onto Locust Rd

11.5 miles. +784/-379 feet

Dist	Type	Note
12.2	←	Locust Rd turns L and becomes King St
15.8	→	R onto Anderson Hill Rd
17.6	←	L onto Purchase St
18.8	↑	Continue straight to stay on Purchase St
19.5	←	L onto Westchester Ave
19.8	→	Keep R to continue on Purchase St
20.8	↑	Continue straight onto Highland Rd
21.7	→	R onto Purchase St
21.8	→	R onto 54/Theodore Fremd Ave
22.8	←	L onto 147/Playland Access Dr
23.0	←	L onto the ramp to Playland

11.4 miles. +395/-744 feet

Dist	Type	Note
23.0	↑	Merge onto Playland Access Dr/Playland Pkwy
24.1	→	R to stay on Playland Pkwy
24.2	📍	End of route

1.2 miles. +33/-62 feet



CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: June 9, 2022

CONTACT: Greg Usry, City Manager

AGENDA ITEM: Consideration of a request by Christ's Church to switch the date of the use of Rectory Street for CCNS Fall Family Day from 10/15/22 to 10/22/22 due to a conflict with Novel Night. The time would stay the same: 8am - 5pm.

FOR THE MEETING OF:

July 13, 2022

RECOMMENDATION: That the City Council approve the request from Christ's Church.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Christ's Church needs to change the date of the approved request to use Rectory Street for CCNS Fall Family Day from 10/15/22 to 10/22/22 due to a conflict with Novel Night.