



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

BOT - 01
BOT 7-5-2016

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	Choose a Strategic Plan Area		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Choose a Manager Priority		

Agenda Heading Title

(Will appear on the Agenda as indicated below)

Appointment of Michael O'Connor to Chairman on the Waterfront Commission

Summary

Background:

The board indicated a desire to vote on a resolution to appoint Mr. O'Connor to Chairman of the Waterfront Commission. He will be taking a vacant alternate seat due to expire on 12-02-2017

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

RESOLUTION

APPOINTMENT OF MICHAEL O'CONNOR AS CHAIRMAN
OF THE WATERFRONT COMMISSION

On motion of TRUSTEE _____ seconded by TRUSTEE _____,
the following resolution was adopted by the Board of Trustees of the Village of Port Chester,
New York:

RESOLVED, that Michael O'Connor, residing in Port Chester, New York, hereby is
appointed as Chairman of the Port Chester WATERFRONT COMMISSION, effective
immediately, and to expire December 2, 2017.

ROLL CALL

AYES:

NOES:

ABSENT:

DATE: July 5, 2016



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	N/A		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

ACCEPTANCE OF ALAN NOVOA AS AN ACTIVE MEMBER OF PUTNAM ENGINE & HOSE COMPANY NO. 2

Summary

Background:

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Resolution for Alan Novoa

RESOLUTION

ACCEPTANCE OF ALAN NOVOA AS AN ACTIVE MEMBER OF PUTNAM ENGINE
& HOSE COMPANY NO. 2

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following
resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, as of the June 2016, meeting of the Putnam Engine & Hose Company
No. 2, the company held an election for a new active member; and

WHEREAS, Alan Nova was elected to be a new active member. Now, therefore, be it

RESOLVED, that the Board of Trustees hereby accepts the election of Alan Nova to
Putnam Engine & Hose Company No. 2

Approved as to Form:

Anthony M. Cerreto, Village Attorney

ROLL CALL

AYES:

NOES:

ABSENT:

DATE:



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	N/A		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

ACCEPTANCE OF ALEXIS MARTINEZ AS AN ACTIVE MEMBER OF PUTNAM ENGINE & HOSE COMPANY NO. 2

Summary

Background:

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Resolution for Alexis Martinez

RESOLUTION

ACCEPTANCE OF ALEXIS MARTINEZ AS AN ACTIVE MEMBER OF PUTNAM
ENGINE & HOSE COMPANY NO. 2

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following
resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, as of the June 2016, meeting of the Putnam Engine & Hose Company
No. 2, the company held an election for a new active member; and

WHEREAS, Alexis Martinez was elected to be a new active member. Now, therefore,
be it

RESOLVED, that the Board of Trustees hereby accepts the election of Alexis
Martinez to Putnam Engine & Hose Company No. 2

Approved as to Form:

Anthony M. Cerreto, Village Attorney

ROLL CALL

AYES:

NOES:

ABSENT:

DATE:



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	N/A		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

ACCEPTANCE OF EDSON DAROSA AS AN ACTIVE MEMBER OF RELIANCE ENGINE & HOSE COMPANY NO. 1

Summary

Background:

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Resolution for Edson Darosa

RESOLUTION

ACCEPTANCE OF EDSON DAROSA AS AN ACTIVE MEMBER OF RELIANCE
ENGINE & HOSE COMPANY NO. 1

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following
resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, on June 10, 2016, the Reliance Engine & Hose Company No. 1, held an
election for a new active member; and

WHEREAS, Edson Darosa was elected to be a new active member. Now, therefore,
be it

RESOLVED, that the Board of Trustees hereby accepts the election of Edson Darosa
to Reliance Engine & Hose Company No. 1

Approved as to Form:

Anthony M. Cerreto, Village Attorney

ROLL CALL

AYES:

NOES:

ABSENT:

DATE:



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

BOT - 02 D
BOT 7-5-2016

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	N/A		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

ACCEPTANCE OF EDWIN A. VILLA-MUNIZ AS AN ACTIVE MEMBER OF HARRY HOWARD HOOK & LADDER COMPANY NO. 1

Summary

Background:

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Resolution for Edwin A. Villa-Muniz

RESOLUTION

ACCEPTANCE OF EDWIN A. VILLA-MUNIZ AS AN ACTIVE MEMBER OF HARRY
HOWARD HOOK & LADDER COMPANY NO. 1

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following
resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, on June 7, 2016, the Harry Howard Hook & Ladder Company No. 1,
held an election for a new active member; and

WHEREAS, Edwin A. Villa-Muniz was elected to be a new active member. Now, therefore,
be it

RESOLVED, that the Board of Trustees hereby accepts the election of Edwin A.
Villa-Muniz to Harry Howard Hook & Ladder Company No. 1

Approved as to Form:

Anthony M. Cerreto, Village Attorney

ROLL CALL

AYES:

NOES:

ABSENT:

DATE:



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

BOT - 02E
BOT 7-5-2016

AGENDA MEMO

Department: Office of the Village Manager

BOT Meeting Date: 7/5/2016

Item Type: Resolution

Sponsor's Name: Christopher D. Steers, Village Manager

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	N/A		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

ACCEPTANCE OF MICHAEL J. DEFONCE AS AN ACTIVE MEMBER OF PUTNAM ENGINE & HOSE COMPANY NO. 2

Summary

Background:

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Resolution for Michael J. DeFonce

RESOLUTION

ACCEPTANCE OF MICHAEL J. DEFONCE AS AN ACTIVE MEMBER OF PUTNAM
ENGINE & HOSE COMPANY NO. 2

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following
resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, as of the June 2016, meeting of the Putnam Engine & Hose Company
No. 2, the company held an election for a new active member; and

WHEREAS, Michael J. DeFonce was elected to be a new active member. Now,
therefore, be it

RESOLVED, that the Board of Trustees hereby accepts the election of Michael J.
DeFonce to Putnam Engine & Hose Company No. 2

Approved as to Form:

Anthony M. Cerreto, Village Attorney

ROLL CALL

AYES:

NOES:

ABSENT:

DATE:



VILLAGE OF
PORT CHESTER
 222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact	x		Public Hearing Required	x	
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

TRANSFERRING THE CONDUCT OF THE VILLAGE ELECTIONS TO THE WESTCHESTER COUNTY BOARD OF ELECTIONS

Summary

Background:

State Election Law, Section 15-104(c) provides that a village board of trustees may by resolution, subject to permissive referendum as provided for in Article 9 of the Village Law, transfer the conduct of village elections to the board of elections.

The consent decree in the matter of United States, et al. v. Village of Port Chester has expired.

The Westchester County Board of Elections successfully conducts the village elections in many villages in the County.

The resolution shall be effective for all elections held more than six months after such resolution is adopted.

Pursuant to Article 9 of the Village Law, a petition protesting against such resolution may be filed with the Village Clerk within thirty days of the adoption of same.

Following Board discussion at the last meeting, the Mayor requested that a resolution be prepared for consideration.

Proposed Action

Adopt the resolution.

Attachments

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TRANSFERRING THE CONDUCT OF THE VILLAGE ELECTIONS TO THE
WESTCHESTER COUNTY BOARD OF ELECTIONS

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following resolution is adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, Elections Law, Section 15-124, provides that the village clerk shall be the elections officer of the village and shall have the responsibility for the general conduct of all village elections; and

WHEREAS, pursuant to New York State Election Law, Section 15-104(c), however, the board of trustees of a village may adopt a resolution, subject to permissive referendum as provided in Article 9 of the Village Law, providing that village elections shall be conducted by the board of elections; and

WHEREAS, the consent decree in the matter of the United States, et al. v. Village of Port Chester with regard to the Voting Rights Act has expired; and

WHEREAS, the Board of Trustees believes it is in the best interest of the Village of Port Chester for the County of Westchester Board of Elections to conduct the Village elections. Now, therefore, be it

RESOLVED, that pursuant to New York State Election Law, Section 15-104(c), the Board of Trustees of the Village of Port Chester hereby transfers the conduct of the Village elections to the County of Westchester Board of Elections, subject to a permissive referendum pursuant to the provisions of Article 9 of the Village Law of the State of New York; and be it further

RESOLVED, that the Village Clerk shall provide notice of this resolution by publication and posting as required by law.

Approved as to Form:

Anthony M. Cerreto, Village Attorney



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

BOT - 04
BOT 7-5-2016

AGENDA MEMO

Department: Office of the Village Attorney

BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Sponsor's Name: BOT Member

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	Choose a Strategic Plan Area		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Choose a Manager Priority		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

Adding a Third Meeting the Board's Monthly Calendar

Summary

Background:

The Mayor has requested discussion of adding a third meeting in the monthly calendar.

Proposed Action

Discuss

Attachments



VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

Letter from Deputy Mayor to Mayor Regarding his Acknowledgement of Findings of Special Counsel Investigation Adopted by the Board of Trustees

Summary

Background:

Trustee Ceccarelli has requested discussion of the Mayor's acknowledgment of a letter between the Deputy Mayor on behalf of the Board with regard to an investigation into certain correspondence between the Village Manager and the Mayor.

Proposed Action

Discuss.

Attachments



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Manager

Village BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title

(Will appear as indicated below on Agenda)

Review of Board Rules of Procedure

Summary

Background:

It was suggested by the Board that a review of the Board Rules of Procedure is needed. Staff has compiled some other Municipal Board Rules of Procedures from municipalities in New York State, as well as a sample Rules of Procedure from NYCOM, so that the Board may compare Port Chester's Rules of Procedure to others.

Proposed Action

Discuss.

Attachments

Rules of Procedure of the Board of Trustees Village of Port Cester
 Rules of Procedure- Village of Tarrytown
 Rules of Procedure- Village of Hastings-on-Hudson
 Rules of Procedure – Rockville Centre
 Rules of Procedure- NYCOM

**RULES OF PROCEDURE OF THE BOARD OF TRUSTEES
VILLAGE OF PORT CHESTER, NEW YORK**

MISSION STATEMENT: It is the purpose of these rules and procedures to insure that the Board of Trustees operates effectively; promotes majority rule while protecting minority rights; preserves the role of the Mayor as the presiding officer; prevents a single member from usurping other member's coequal rights; and enhances public participation and engagement as well as transparency in Board proceedings.

RULE ONE: MEETINGS

1. The Board shall meet at such times as it may determine or as otherwise provided by the Village Charter. Regular monthly meetings shall be held on the first and third Monday of the month at 7:00 p.m. unless otherwise noticed. The Board may also determine to meet on any other day or date when desirable or when a holiday falls on any such Monday.
2. Special meetings of the Board are all those meetings other than regular meetings. A special meeting may be called by the Mayor or any two (2) trustees upon notice to the entire Board. The notice shall contain a statement of the object for which the special meeting shall be called. Notice shall be given at least 24 hours in advance unless an emergency exists.
3. As a general rule, all regularly scheduled meetings shall be held in the Village Court Room, located at 350 North Main Street.

RULE TWO: QUORUM

1. A quorum shall be required to conduct business. A quorum consists of four members. In the absence of a quorum, a lesser number may adjourn and authorize the Clerk to compel the attendance of absent members.
2. In the event that a meeting is cancelled due to a lack of quorum, the Village Clerk shall make a record stating those members of the Board of Trustees who were not present at the time.

RULE THREE: AGENDAS

1. The Mayor shall set the agenda. This rule shall mean that the Mayor shall determine the order that the item is listed on the agenda, consistent with these rules of procedure.
2. The agenda shall be prepared by the Clerk at the direction of the Mayor, or the Deputy Mayor in his/her absence.
3. Addition to the agenda may be made by any member of the Board. All matters proposed, by Trustees, to be placed on the agenda of a regular meeting of the Board shall be submitted to the Clerk, with a copy sent to the Mayor, no later than 12:00 noon the

Wednesday preceding the meeting. All matters proposed by the Mayor to be placed on the agenda of a regularly meeting of the Board shall be submitted to the Clerk no later than 12:00 noon the Thursday preceding the meeting, when the tentative agenda will be reviewed and finalized by the Mayor. Any item that does not conform to this deadline will have to be an add-on item during the meeting, requiring a unanimous vote of the members present. If there is no such request to have it entertained as an add-on, or if the vote to add the item to the agenda fails, then it will be subsequently placed on the following regularly scheduled meeting agenda. Correspondence addressed to the Mayor or Board of Trustees shall be likewise filed with the Clerk to allow for inclusion in the meeting packets. The Clerk shall deliver a copy of the agenda and packet to members at an address so designated by each member. Agenda items that involve the preparation and review of a resolution or local law shall be a matter of Board discussion in the first instance and upon the request of any two members. This will facilitate group thought early in the legislative process, a more collaborative approach and the efficient use of scarce Village resources. (Added to Rules per resolution adopted by Board of Trustees dated March 19, 2012.

4. Only the Mayor, Village Manager or a Village Trustee can authorize/request that an item be placed on the agenda.
5. The Village Clerk will distribute the agenda packets for SPECIAL MEETINGS the day that the meeting is officially called.
6. Transaction of business at Special Meetings – At a special meeting the business to be transacted thereat shall be only that stated in the notice of such meeting, except that any other business may be transacted at such special meeting by the unanimous consent of all the members of the Village Board.
7. All meetings shall be held at either 350 North Main Street, 10 Pearl Street or 222 Grace Church Street.

RULE FOUR: MOTIONS

1. Any member can make a motion once the member is recognized by the Mayor, or person presiding over the meeting, for the purpose of making a motion. Every motion requires a second before debate begins.
2. Every motion shall be stated by the Mayor or read by the Clerk before [debate and] the question is taken. Any Board member can request a full reading of any proposed resolution.
3. A member once recognized by the Mayor, shall not be interrupted when speaking unless it is to call him/her to order. If a member, while speaking is called to order, he/she shall cease speaking until the question of order is determined and, if in order, shall then be permitted to proceed. As the presiding officer, the Mayor shall act as the parliamentarian and determine points of order. The Mayor or any Board member may seek guidance

from the Village Attorney or Corporation Counsel on such matters. Where there is disagreement between the Mayor and a Board member an appeal shall be taken by entire Board.

4. Members shall refrain from making any comment unless and until recognized.
5. There is no limit to the number of times a board member may speak on a question.
6. Motions to close or limit debate may be entertained but shall require a two-thirds vote (e.g. five members).
7. Motions require a second.

RULE FIVE: VOTING

1. Each member shall have one vote.
2. A member must vote on every question, unless a request to abstain has been made to the Mayor. An abstention is only permissible upon a conflict of interest or other reason such that would suggest an appearance of impropriety by the member. The nature of said conflict must be explained by the member seeking to abstain and such explanation shall be made a part of the record. Said member shall not participate in the discussion with regard to such matter.
3. Once the question has been put by the Mayor and the vote is being taken, members shall confine themselves to voting and not resume discussion or debate or make further comments on the question. If a member begins explaining his/her vote, or continues discussion, once a call for vote has been made, the Mayor shall call that member out of order and ask that member to only state their respective vote.
4. A majority of the total authorized voting power (e.g. four members) is necessary to pass a matter unless otherwise specified by State law.
5. A vote upon any question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes.
6. An abstention is neither an "aye" or a "no" and a member abstaining shall be recorded as "Abstention" for such vote.

RULE SIX: ORDER OF BUSINESS

1. The order of business at each meeting shall be:
 1. Call to order and pledge of allegiance
 2. Roll call
 3. Approval of minutes at previous meetings
 4. Public Comment

5. Public hearings
6. Resolutions
7. Report of the Village Manager, Police and Fire Chief and Board Committees
8. Correspondence
9. Discussion Items
10. Public Comments
11. Trustee Comments
12. Adjournment

2. The order of business may be suspended by the Mayor at his/her discretion. The order of business only refers to the numerical order that an item is placed, and not to be interpreted as the elimination of an item from the agenda.

RULE SEVEN: PUBLIC COMMENT

1. With the exception of a public hearing, the public shall only be allowed to speak during the Public Comment period of the meeting.
2. Speakers must step to the front of the room, and be recognized by the Mayor before proceeding. Speakers shall face the Board at all times.
3. Speakers shall be limited in their remarks to FIVE minutes. Speakers are limited to speaking one time and are not permitted to come to the podium and speak again. The Mayor shall track the speaker's time with a stopwatch and notify the speakers when their time has expired.
4. Speakers may not yield any remaining time that they may have to another speaker.
5. Board members may, with the permission of the Mayor, interrupt a speaker during his/her remarks, but only for the purpose of clarification or information. Board members should not engage in a dialogue with a speaker.
6. All remarks shall be addressed to the Board as a body and not to any member thereof.
7. Speakers shall give the Board the respect as becoming their office is due and shall observe the commonly accepted rules of courtesy, decorum.

RULE EIGHT: RECORDING EQUIPMENT

Members of the public are allowed to audio or video record the open portion of all public meetings. Executive or closed sessions may not be recorded. However, in accordance with the opinions of the New York State Commission on Open Government, any recording must be done in a manner that does not interfere with the meeting and upon the following restrictions.

The Mayor has the authority to determine whether such recording is being done in an intrusive manner, and may, in making such determination, take into account the brightness of the lights,

distance from the deliberations of the Board, size of the equipment, and the ability of the public to still participate in the meeting without undue distraction. If the Mayor shall make the determination that the recording is intrusive and has the effect of interfering with the meeting, the individual making the recording shall be told to take the appropriate ameliorative action. Should the individual fail or refuse to do so, he/she shall be requested to leave the room.

The use of cell phones, or other transmission methods for audible communications by Board members, or members of the public, during a meeting is prohibited unless an emergency exists. If such case does arise, the Board member shall advise the Mayor prior to the beginning of the meeting.

RULE NINE: ADJOURNMENT

A motion to adjourn is always in order (except when a vote is being taken) and such motion shall be decided without debate.

RULE TEN: MINUTES

1. Minutes shall be taken by the Clerk.
2. Minutes shall consist of a record or summary of all motions, proposals, resolutions or any other matter formally voted upon and the vote thereon. Minutes shall be taken at an executive session of any action that is taken by formal vote, which shall consist of a record or summary of the final determination of such action. However, that such summary need not include any matter, which is not required to be made public by the NYS Freedom of Information Law or is otherwise outside the scope of such statute. (e.g. privileged communications with the Village Attorney or Corporation Counsel)
3. Minutes shall also include the following:
 1. Date, place and time of meeting
 2. Notation of presence or absence of Board members and time of arrival or departure if different from the time of call to order
 3. Name and title of other village officials and employees present
 4. Record of report of Village Manager
 5. Record of communications received
 6. Time of adjournment
 7. Signature of Clerk
4. If a Board member would like a statement included in the minutes, then a member shall submit the statement in writing to the Village Clerk, which shall be made a part of the record.
5. The Village Clerk shall comply with the standards established in the State Open Meetings Law (a draft version of the minutes shall be made readily available within two (2) weeks, and one (1) week for executive session items.

RULE ELEVEN: CHANGE OF RULES

The Board may, by two-thirds vote of those present and voting, waive or suspend any rule of the Board so long as it does not conflict with the Charter or State Law.

These Rules shall remain in force and effect until amended by an affirmative vote of five or more members.

RULE TWELVE: PROCEDURES NOT COVERED

Robert's Rules of Order, (10th Revised Edition, Henry Robert et al) shall govern the procedure of the Board as to any matter that is not covered in these Rules. A copy of Robert's Rules shall be provided to each member.

RULE THIRTEEN: PARLIAMENTARIAN

As the presiding officer, the Mayor shall act as the parliamentarian and determine points of order. The Mayor or any Board member may seek guidance from the Village Attorney or Corporation Counsel on such matters. Where there is disagreement between the Mayor and a Board member an appeal shall be taken by the entire Board.

RULE FOURTEEN: MISCELLANEOUS

1. At the Re-organizational Meeting, the Mayor shall determine the seating arrangement of the Board. The seating arrangement may be changed at any time by majority vote (4) of the Board.
2. Board members that anticipate being absent from a meeting shall notify the Clerk no later than 2:00 p.m. the day of the meeting.

RULE FIFTEEN: BOARD PRESENTATIONS

Presentations are to be provided in the Board package prior to meeting in order for the item to be discussed. If not provided the presentation will be postponed to the next meeting agenda or with a majority vote of the Board the presentation can remain on the agenda.

Adopted: September 7, 2010

Amended: March 19, 2012

SAMPLE RULES OF PROCEDURE

The following are sample rules of procedure for a village board of trustees. They may be used exclusively or in addition to *Robert's Rule of Order*. They are meant only to serve as a guideline and should be tailored to the specific needs of a particular municipality. Your municipality may wish to make its rules of procedure more extensive, but at the very least it should address the topics in the sample.

SAMPLE RULES OF PROCEDURE

Regular Meetings:

The Board of Trustees shall hold regular meetings on the 3rd Tuesday of each month. Such regular meetings shall commence at 7 p.m. and be conducted in the boardroom at village hall.

Any deviation of the foregoing paragraph shall be determined by the Board of Trustees.

Special Meetings:

Special meetings of the Board of Trustees are all those Board meetings other than regular meetings.

A special meeting may be called by the Mayor or any Trustee upon notice to the entire Board. Notice shall be given by telephone, in person, or in writing at least 24 hours in advance unless an emergency exists.

Quorum:

A quorum shall be required to conduct business. A quorum of the (5) member board of trustees shall be (3) three. In the absence of a quorum, a lesser number may adjourn and compel the attendance of absent members.

Executive Sessions:

Executive sessions shall be held in accordance with the NYS Public Officers Law §105. All executive sessions shall be commenced in a public meeting.

Agendas:

The agenda shall be prepared by the Clerk at the direction of the Mayor. The Mayor or any Trustee may have an item placed on the agenda. When possible, items for the agenda shall be given to the Clerk at least 24 hours before the meeting, however, items may be placed on the agenda at anytime, including during the meeting.

The agenda shall be prepared by noon on the day of the meeting. If necessary a supplemental agenda shall be distributed at the beginning of the meeting.

Voting:

Pursuant to Village Law each member of the Board shall have one vote. The Mayor may vote on any matter, but must vote in case of a tie.

A majority of the totally authorized voting power is necessary to pass a matter unless otherwise specified by State law.

An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

A vote upon any question shall be taken by ayes and noes, and the names of the members present and their votes shall be entered in the minutes.

Minutes:

Minutes shall be taken by the Clerk.

Minutes shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes shall be taken at executive session of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the NYS Freedom of Information Law.

Minutes shall also include the following;

- Name of the Board;
- Date, place and time of meeting;

- Notation of presence or absence of Board members and time of arrival or departure if different from time of call to order and adjournment;
- Name and title of other village officials and employees present and well approximate number of attendees;
- Record of communications presented to the Board;
- Record of reports made by Board or other village personnel;
- Time of Adjournment; and
- Signature of Clerk or person who took the minutes if not the Clerk.

Minutes shall not contain a summary of the discussion leading to action taken or include verbatim comments unless a majority of the Board shall resolve to have the Clerk do so.

Minutes shall be approved at the next board meeting. Amendments to the minutes shall require Board approval.

Order of Business:

- Call to order
- Roll call
- Approval of minutes of previous meeting
- Report of officers and committees (list)
- Public comment period
- Old business
- New business
- Appropriations
- Auditing
- Adjournment

General Rules of Procedure:

The Mayor shall preside at meeting. In the Mayor's absence the Deputy Mayor shall preside.

The presiding officer may debate, move and take other action that may be taken by other members of the Board.

Board members are not required to rise but must be recognized by the presiding officer before making motions and speaking.

Motions do not require a second.

A member, once recognized shall not be interrupted when speaking unless it be to call him/her to order. If a member, while speaking, be called to order, they shall cease speaking until the question of order be determined, and, if in order, he shall be permitted to proceed.

There is no limit to the number of times a member may speak on a question.

Motions to close or limit debate may be entertained but shall require a two-thirds vote.

Guidelines for Public Comment:

The public shall be allowed to speak only during the Public Comment period of the meeting or at such other time as a majority of the Board shall allow.

Speakers must step to the front of the room.

Speakers must give their name, address and organization, if any.

Speakers must be recognized by the presiding officer.

Speakers must limit their remarks to 5 minutes on a given topic.

Speakers may not yield any remaining time they may have to another speaker.

Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.

All remarks shall be addressed to the Board as a body and not to any member thereof.

Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste.

Interested parties or their representatives may address the Board by written communications.

Guidelines for Use of Recording Equipment

All members of the public and all public officials are allowed to tape or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The mayor may make the determination that the recording is being done in an intrusive manner taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the village board, size of the equipment, and the ability of the public to still participate in the meeting. If the mayor makes the determination that the recording is intrusive and has the effect of interfering with the meeting, the mayor may request an accommodation to avoid the interference and if not complied with ask the individual to leave the meeting room.

Adjournment:

Meetings shall be adjourned by motion.

Amendments to the Rules of Procedure:

The foregoing procedures may be amended from time to time by a majority vote of the Board.

BOARD OF TRUSTEES
EXECUTIVE SESSION POLICY

It is the policy of the Board of Trustees of the Village of Hastings-on-Hudson to conduct Village business in an open fashion and to make available as much information as may legally and practically be disseminated.

The New York Open Meetings Law authorizes the Board to conduct business in executive session in a number of areas. These include:

1. matters which will imperil the public safety if disclosed;
2. matters which may disclose the identity of a law enforcement agent or informer;
3. information relating to criminal investigations;
4. discussions relating to proposed, pending or current litigation;
5. collective bargaining negotiations;
6. personnel matters; and
7. the proposed acquisition, sale or lease of real property or securities.

The Board recognizes that it is authorized to use executive sessions in these situations, but will do so with restraint.

To maintain confidentiality and to encourage the uninhibited discussion of the subject(s) of executive sessions, the specific subject matter and any statements made or positions taken by all participants must remain confidential and may not be disclosed by any participant unless and until a majority of the Board votes to authorize the release thereof by the Board.

It has been and continues to be the practice of the Board that all members of the Board, acting together, come to agreement by consensus on the specific information which is to be released to the public, the suitable vehicle for reporting that information, and the timing of the reporting.

Adopted by the Board of Trustees on September 28, 1993

BOARD OF TRUSTEES
RULES OF PROCEDURE

SECTION 1 - Regular Meetings

The Board of Trustees shall hold regular meetings on the 1st and 3rd Tuesday of each month. Such regular meetings shall commence at 7:30 p.m. and be conducted in the board room at the Municipal Building or in the auditorium of the Community Center. Any deviation of the foregoing paragraph shall be determined by the Board of Trustees. Meeting dates may be shifted to accommodate religious holidays or national election days.

SECTION 2 - Special Meetings

Special meetings of the Board of Trustees are all those Board meetings other than regular meetings. A special meeting may be called by the Mayor or a majority of the Board of Trustees upon notice to the entire Board. Notice shall be given by telephone, by email, in person, or in writing.

SECTION 3 - Quorum

A quorum shall be required to conduct business. A quorum of the five (5) member Board of Trustees shall be three (3). In the absence of a quorum, a lesser number may adjourn and compel the attendance of absent members.

SECTION 4 - Executive Sessions

Executive Sessions shall be held in accordance with the New York State Public Officers Law §105. All executive sessions shall be commenced in a public meeting. (Appendix I Executive Session Policy)

SECTION 5 - Agendas

The agenda shall be prepared by the Village Manager and Village Clerk in consultation with the Mayor. The Mayor or any Trustee may have an item placed on the agenda. When possible, items for the agenda shall be given to the Village Manager the Friday morning before the meeting; however, items may be placed on the agenda at anytime, including during the meeting, by consent of a majority of the Board. The agenda shall be prepared by Friday preceding the meeting. If necessary, a supplemental agenda shall be distributed at the beginning of the meeting.

SECTION 6 - Voting

Pursuant to Village Law each member of the Board shall have one vote. The Mayor may vote on any matter but must vote in case of a tie. A majority of the totally authorized voting power is necessary to pass a matter unless otherwise specified by State Law.

An abstention, silence or absence shall be recorded as such, but shall be considered a negative vote for the purpose of determining the final vote on a matter.

A vote upon any question shall be taken by ayes and nays, and the names of the members present and their votes shall be entered in the minutes.

SECTION 7 - Minutes

Minutes shall be taken by the Village Clerk. Minutes shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes shall be taken at executive session of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action and the date and vote thereon, provided, however, that such summary need not include any matter which is not required to be made public by the New York State Freedom of Information Law.

Minutes shall also include the following:

- Name of the Board;
- Date, place and time of meeting;
- Notation of presence or absence of Board members and time of arrival or departure if different from time of call to order and adjournment;
- Name and title of other village officials and employees present in an official capacity and approximate number of attendees;
- Record of communications presented to the Board;
- Record of reports made by Board or other village personnel;
- Time of adjournment;
- Signature of Village Clerk or person who took the minutes if not the Clerk.

Minutes need not contain a summary of the discussion leading to action taken or include verbatim comments unless a majority of the Board shall resolve to have the Clerk do so. Minutes shall be approved at the next Board meeting. Amendments to the minutes shall require Board approval.

SECTION 8 - Order of Business

The order of business shall be:

- Call to order
- Pledge of Allegiance
- Roll Call
- Appointments
- Approval of Minutes of previous meeting
- Approval of Warrants
- Public Comments
- Resolutions
- Village Manager's Report
- Board Discussion and Comments
- Announcements
- Adjournment

The order of business need not be followed if the Mayor determines that it is necessary to deviate.

SECTION 9 - General Rules of Procedure

The Mayor shall preside at meetings. In the Mayor's absence the Deputy Mayor shall preside. The presiding officer may debate, move and take other action that may be taken by other members of the Board.

Board members are not required to rise but must be recognized by the presiding officer before making motions and speaking. A member, once recognized, shall not be interrupted when speaking unless it be to call the member to order. If a member, while speaking, be called to order, they shall cease speaking until the question of order be determined, and, if in order, they shall be permitted to proceed.

There is no limit to the number of times a member may speak on a question.

Motion to close or limit debate may be entertained but shall require a two-thirds vote.

SECTION 10 - Guidelines for Public Comment

The public shall be allowed to speak only during the Public Comment period of the meeting or at such other time as the presiding officer shall allow. The presiding officer may modify these guidelines if warranted.

Speakers must step to the front of the room and speak into the microphone.

Speakers must give their name, address and organization represented, if any.

Speakers must be recognized by the presiding officer.

Speakers must limit their remarks to five (5) minutes on a given topic, and may be recognized again by the presiding officer after other speakers have had an opportunity to speak.

Speakers may not yield any remaining time they may have to another speaker.

Board members may, with the permission of the Mayor, interrupt a speaker during their remarks, but only for the purpose of clarification or information.

All remarks shall be addressed to the presiding officer.

Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste.

Interested parties or their representatives may address the Board with written communications. Written communications shall be delivered to the Village Manager or Village Clerk. Speakers may not read written communications verbatim but should summarize their contents.

SECTION 11 - Use of Recording Equipment

All members of the public and all public officials are allowed to tape or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Village Board, size of the equipment, and the ability of the public

still to participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, the presiding officer may request an accommodation to avoid the interference, and if not complied with ask the individual to leave the meeting room.

SECTION 12 - Adjournment

Meetings shall be adjourned by motion.

SECTION 13 - Amendments to the Rules of Procedure

The foregoing procedures may be amended from time to time by a majority vote of the Board.

ADOPTED- July 15, 1997

Amended April 7, 2005 (Public Comment)

Amended April 10, 2007 (Order of Business)

Amended April 8, 2008 (Voting)

Amended April 21, 2009 (Regular Meetings, Special Meetings)

Amended Sept. 8, 2009 (Starting Time)

Adopted on 4/6/15

ADOPTION OF THE VILLAGE OF TARRYTOWN BOARD OF TRUSTEES OFFICIAL
RULES OF PROCEDURE

Trustee Butler moved, seconded by Trustee McGovern, and unanimously carried, that the following resolution be approved: Approved: 6-0

BE IT RESOLVED that the Board of Trustees of the Village of Tarrytown does hereby designate the following Official Rules of Procedure

Pursuant to New York Village Law §4-412(2), but subject to the other provisions of New York Law and the Village of Tarrytown Code, the following rules of procedure are adopted and shall govern the meetings of the Board of Trustees of the Village of Tarrytown:

PART A: MEETINGS

SECTION 1 - Regular Meetings

The Board of Trustees generally will hold regular meetings on the 1st and 3rd Monday of each month, with the exception of the months of June, July and August, when the meeting shall be held on the 3rd Monday of the month and due to conflicts with holidays, the following Tuesdays: September 8, 2015, January 19, 2016 and February 16, 2016. Such regular meetings shall commence at 8:00 PM and be conducted in the Boardroom at the Village Hall. Any deviation from this schedule shall be determined by the Board of Trustees.

SECTION 2 - Special Meetings

Special Meetings of the Board of Trustees are all those Board meetings other than regular meetings. A special meeting may be called by the Mayor or by three (3) members of the Board of Trustees upon notice to the entire Board. Notice shall be given in accordance with law.

SECTION 3 - Executive Sessions

Executive Sessions shall be held in accordance with the New York State Public Officers Law §105. All executive sessions shall be commenced in a public meeting (See Part C, Section 4).

SECTION 4 – Work Sessions

Work Sessions of the Board of Trustees shall be held on the Wednesday before the Monday Board of Trustees meeting noted in Section 1 hereinabove. These meetings are open to the public; however, the public shall not be permitted to comment on any issue. Individuals or groups invited to meet with the Board of Trustees at the Work Session for specific agenda items shall be permitted to comment on that specific agenda item. Notice shall be given in accordance with law.

PART B: POLICIES

SECTION 1 - Quorum

A quorum of the Board of Trustees shall be required to conduct business. A quorum of the seven (7) member Board shall be four (4).

SECTION 2 - Voting

Pursuant to Village Law each member of the Board of Trustees shall have one vote. The Mayor may vote on any matter and must vote in case of a tie. The affirmative vote of four (4) members of the Board is necessary to pass a matter unless otherwise specified by New York State Law.

SECTION 3 - Agendas

The agenda shall be prepared by the Village Clerk, in cooperation with the Village Administrator by Friday preceding the Monday meeting. An item may be placed on the agenda at any time, including during the meeting, by consent of a majority of the Board.

SECTION 4 - Order of Business

The order of business shall be:

- Call to order
- Miscellaneous and Liaison Reports
- Changes and/or Additions to the Agenda
- Village Administrator's Report
- Public Hearings and/or Public Information Meetings
- Opportunity for the Public to Address the Board Only on Agenda Items
- Resolutions
- Approval of Minutes
- Approval of Audited Vouchers
- Opportunity for the Public to Address the Board
- Adjournment

The order of business need not be followed if the Mayor determines that it is appropriate to deviate.

SECTION 5 - Minutes

Minutes at all Board of Trustee meetings shall be the responsibility of the Village Clerk, who pursuant to approval from the Board of Trustees may employ the services of a person to take minutes. Minutes of an open meeting shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon. Minutes of an executive session shall be taken of any action that is taken by formal vote and shall consist of a record or summary of the final determination of such action and the vote

thereon; provided, however, that such summary need not include any matter which is not required to be made public by the New York State Freedom of Information Law.

Minutes need not contain a summary of the discussion leading to action taken or include verbatim comments unless a majority of the Board resolves to have the Clerk do so. Minutes shall be considered for approval at the next Board meeting after the minutes are received from the Village Clerk.

PART C: RULES AND PROCEDURES

SECTION 1 - General Rules of Procedure

The Mayor shall preside at meetings of the Board of Trustees. In the Mayor's absence the Deputy Mayor shall preside. In the absence of the Mayor and the Deputy Mayor, the remaining members of the Board of Trustees shall decide which member shall serve as the presiding officer. Board members are not required to rise but must be recognized by the presiding officer before making motions and speaking. A member, once recognized shall not be interrupted when speaking unless it is to call the member to order. If a member, while speaking, be called to order, he or she shall cease speaking until the question of order is determined, and, if in order, he or she shall be permitted to proceed.

There is no limit to the number of times a member may speak on a question.

Motion to close or limit debate may be entertained but shall require the affirmative vote of four (4) members of the Board.

Procedural questions which are not governed by New York State law or the Village Code or addressed in these Rules of Procedure shall be determined in accordance with Robert's Rules of Order.

SECTION 2 - Guidelines for Public Comment

The public shall be allowed to speak only during Public Hearings and Public Comment periods.

General Requirements

Speakers must be recognized by the presiding officer.

Speakers must step to the front of the room and speak into the microphone or at the lectern should one be provided. Speakers are not to approach the dais without invitation and are directed to make their remarks from the microphone or lectern.

Speakers must give their name, address and organization represented, if any.

No items or documents may be placed on the dais or presented to the Board unless either authorization is requested and granted by the presiding officer or a Board member specifically

requests to see an item. All items for presentation that are granted authorization or requested by a Board member shall be presented to the Village Clerk who shall pass it the Board.

Public Hearings

Speakers shall have ten (10) minutes to address the Board of Trustees on the specific matter that is the subject of the Public Hearing before yielding to the next speaker. Speakers may once again address the Board during the Public Hearing period for one additional five (5) minute period, but only to rebut statements made by the Board of Trustees or other speakers in regards to the matter that is the subject of the Public Hearing.

Public Comment

During the period identified as "Opportunity for the public to address the board on agenda items only", speakers shall have three (3) minutes to address the Board of Trustees. A timer shall be utilized that will beep or produce another sound to indicate that a speaker's three (3) minute time limit for Public Comment has been reached. Upon being notified that his or her time limit has been reached, a speaker shall cease speaking, leave the microphone or lectern, if one is provided, and return to his or her seat.

The presiding officer may modify these guidelines if warranted.

During the period identified as "Opportunity for the public to address the board", speakers shall have five (5) minutes to address the Board of Trustees before yielding to the next speaker. Speakers may once again address the Board during the Public Comment period for one additional three (3) minute period after all speakers have an opportunity to address the Board for their original five (5) minute period.

Board members may interrupt a speaker during the speaker's remarks, but only for the purpose of asking questions of the speaker for purposes of clarification, information or to ask follow-up questions.

All remarks shall be addressed to the Mayor and Board of Trustees.

Board members may respond to questions or comments at their discretion.

Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste and shall not use foul language, display unacceptable behavior, or be disruptive of the proceedings.

A timer shall be utilized that will beep or produce another sound to indicate that a speaker's five (5) minute time limit for Public Comment or three (3) minute time limit has been reached. Upon being notified that his or her time limit has been reached, a speaker shall cease speaking, leave the microphone or lectern, if one is provided, and return to his or her seat.

The presiding officer may modify these guidelines if warranted.

SECTION 3 - Use of Recording Equipment

All members of the public and all public officials are allowed to photograph and tape or video record public meetings so long as the photography or recording is done in a manner which does not interfere with the meeting. The presiding officer may make the determination that the photography or recording is being done in a manner that interferes with the meeting after taking into consideration attendant movement and activity, distance from the deliberations of the Board, noise, size of equipment, ability of the public to participate in the meeting notwithstanding the photography or recording, and any other pertinent factor. If the presiding officer makes the determination that the photography or recording is interfering with the meeting, the presiding officer may request an accommodation to avoid the interference and if not sufficient or complied with, order the photography or recording to be stopped.

SECTION 4 - Executive Session Policy

It is the policy of the Board of Trustees of the Village of Tarrytown to conduct Village business in an open fashion and to make available as much information as may legally and practically be disseminated.

The New York Open Meetings Law authorizes the Board to conduct business in executive session in a number of areas. These include:

1. Matters which will imperil the public safety if disclosed;
2. Matters which may disclose the identity of a law enforcement agent or informer;
3. Information relating to criminal investigations which would imperil effective law enforcement if disclosed;
4. Discussions relating to proposed, pending or current litigation;
5. Collective bargaining negotiations;
6. Personnel matters relating to particular individuals; and
7. The proposed acquisition, sale, or lease of real property or securities when disclosure would substantially affect the value.

The Board recognizes that it is authorized to use executive sessions in these and other situations, but will do so with restraint.

To maintain confidentiality and to encourage the uninhibited discussion of the subject matter in Executive Session, all statements made and positions taken by all participants must remain confidential and may not be disclosed by any participant unless and until disclosure is authorized by affirmative vote of four (4) members of the Board.

It has been and continues to be the practice of the Board that all members of the Board, acting together, come to agreement by consensus on the specific information which is to be released to the public, the suitable vehicle for reporting that information, and the timing of the reporting.



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Office of the Village Attorney

BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Sponsor's Name: BOT Member

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	Choose a Strategic Plan Area		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Choose a Manager Priority		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

Review of Strategic Plan

Summary

Background:

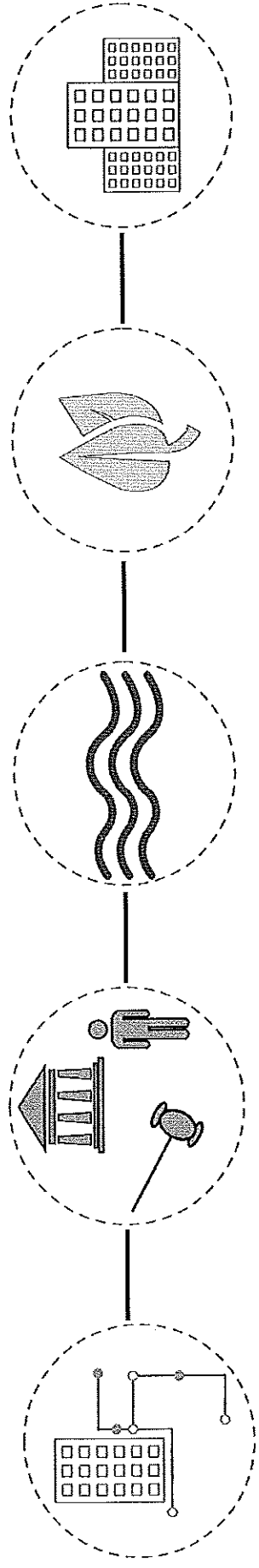
Following a retreat, the Board of Trustees adopted a Strategic Plan for 2014-2016. Trustee Ferrara has requested a follow-up discussion with regard to a review of the plan and next steps.

Proposed Action

Discuss

Attachments

Resolution accepting and adopting Strategic Plan dated April 7, 2014
 Strategic Plan



VILLAGE OF PORT CHESTER STRATEGIC PLAN

2014-2016



Board of Trustees

Mayor Neil J. Pagano
Gregory K. Adams
Daniel Brakewood
Gene Ceccarelli
Joseph D. Kenner
Luis A. Marino
Saverio L. Terenzi

Village of Port Chester

Christopher D. Steers, Village Manager
Anthony M. Cerreto, Village Attorney
Christopher Gomez, AICP, Director of Planning and Development
Jessica C. Youngblood, Village Planner
Peter Miley, Building Inspector
Janusz Richards, Village Clerk
Leonie Douglas, Village Treasurer
Rocky Morabito, DPW General Foreman
Dolph Rotfeld, Consulting Village Engineer
Christopher Ameigh, Administrative Aide to the Village Manager

Port Chester Village Hall
222 Grace Church Street
Port Chester, NY 10573



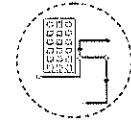
TABLE OF CONTENTS

Executive Summary

1

Opportunity Area #1: Downtown: Transit Oriented Development

2



Opportunity Area #2: Downtown: Municipal Government Center

3



Opportunity Area #3: Waterfront Redevelopment & Revitalization

4



Opportunity Area #4: Fox Island Peninsula

5



Opportunity Area #5: United Hospital Site Redevelopment

6



Board of Trustees Special Workshop Presentation, March 22, 2014

Appendices

EXECUTIVE SUMMARY

Overview

The Village Board of Trustees has recognized the need for a Strategic Plan to identify and prioritize economic development projects, provide an articulated direction and focus, and allocate scarce village resources to ensure the successful completion of specific projects consistent with the adopted Comprehensive Plan.

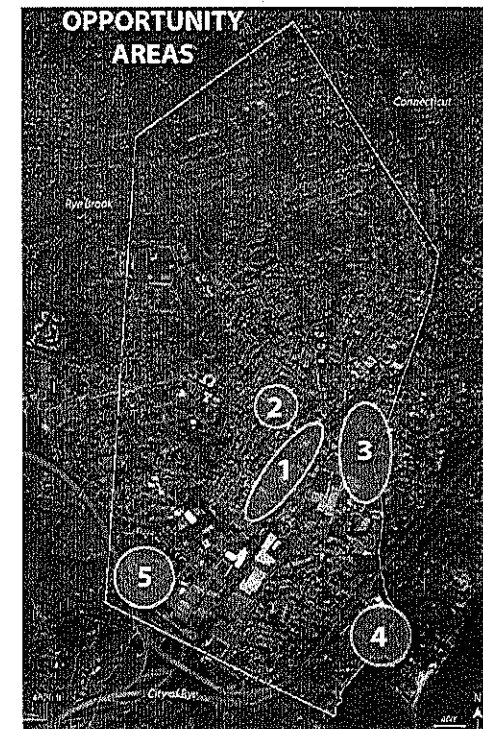
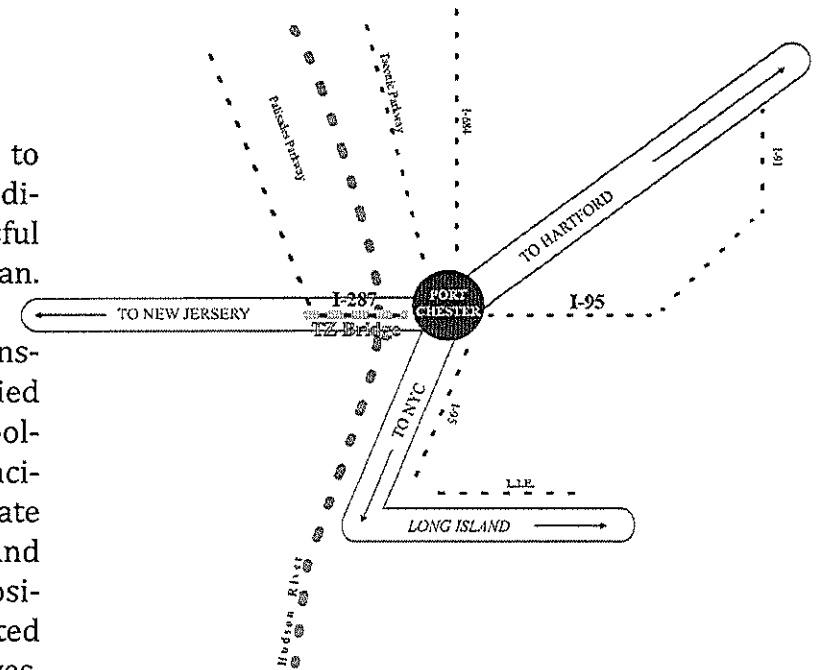
Due to the Village's unique geographic position as a regional and local transportation node in the New York metropolitan region, Port Chester is identified for continued economic development opportunities by the New York Metropolitan Transportation Council and directly aligned with the policies and principles identified through the Sustainable Communities Initiative, New York State Regional Economic Development Council, Mid-Hudson Sustainability Plan and other regional planning agendas. As such, the Village is particularly well-positioned to leverage grant funding through the annual New York State Consolidated Funding Application process in furtherance of specific strategic plan objectives.

Process

On March 22, 2014, the Village Board of Trustees held a special workshop facilitated by John Nolon of the Pace Land Use Law Center to commence the strategic planning process. After reviewing federal, state and local development goals and associated funding sources, the Board identified the following five opportunity areas for focus in the strategic plan:

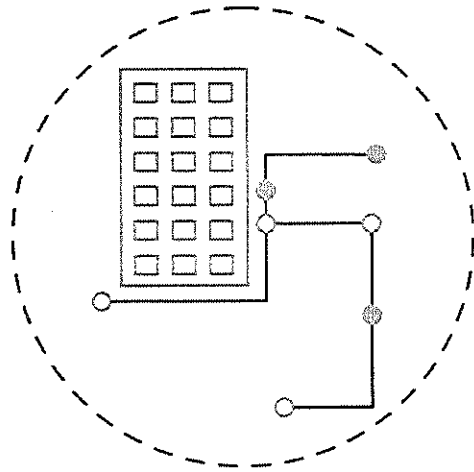
1. Facilitating transit oriented development in the downtown
2. Creating a new municipal center
3. Enhancing and revitalizing waterfront areas
4. Redevelopment of Fox Island peninsula
5. Redevelopment of the United Hospital site

At conclusion of the workshop, the Village Board of Trustees tasked Village Staff to formulate this draft strategic plan document to detail potential feasibility, cost-benefit analysis, grant funding sources and availability, sequence and time frames, implementation strategies, and action items relative to each priority opportunity area for the ensuing two years (March 2014-February 2016).



DOWNTOWN: TRANSIT ORIENTED DEVELOPMENT

OPPORTUNITY AREA #1

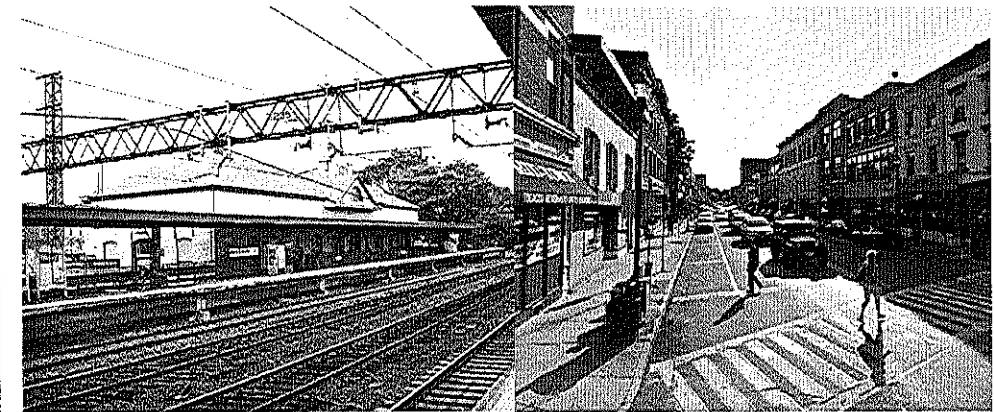


STRATEGIC PLANNING GOALS

COMPREHENSIVE PLAN CONSISTENCY

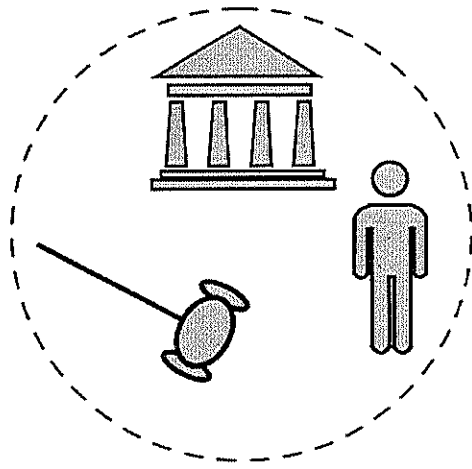
The Downtown/Train Station 'higher intensity planning zone' allows for mixed use and transit oriented development. This area is targeted to absorb residential development pressure by encouraging studio and one bedroom residential units. Appropriate scale and design of new development should keep in concert with the existing community fabric.

- Encourage investment in various modes of public transit
- Promote walking for commuting, recreation and other trips by creating safe and attractive pedestrian environments throughout the Village
- Provide infrastructure and facilities to encourage safe and convenient bicycling for commuting, recreation and other trips
- Improve Port Chester's commercial areas to encourage new investment and create more attractive locations for visitors and residents



NEW MUNICIPAL GOVERNMENT CENTER

OPPORTUNITY AREA #2

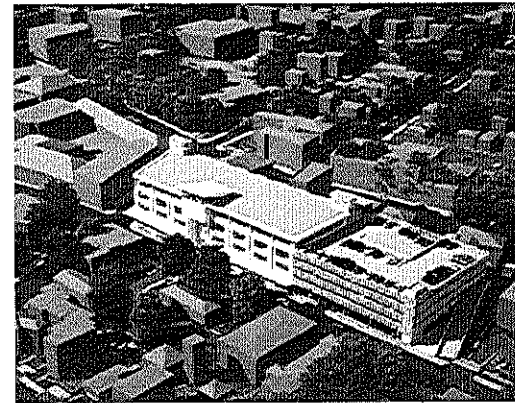
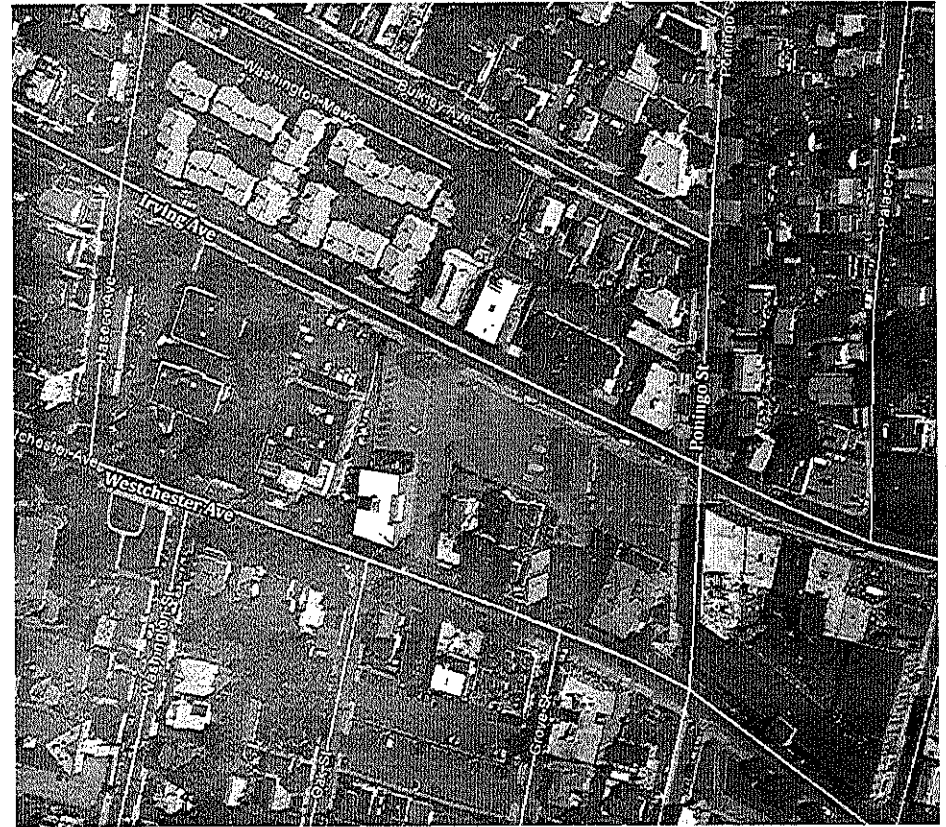


STRATEGIC PLANNING GOALS

COMPREHENSIVE PLAN CONSISTENCY

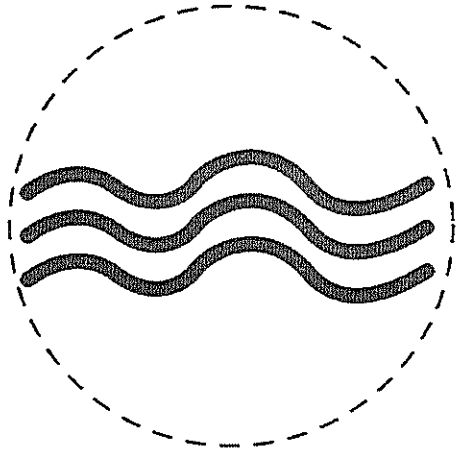
Exploring the feasibility for a new municipal center, housing Village Departments, the Town of Rye Assessor, the Port Chester Police Department, and state representatives will enhance operational services through shared services.

- Maintain and, as necessary, construct government buildings and offices to ensure that the administration of the Village operates effectively and efficiently
- Encourage inter- and intra-municipal cooperation and coordination to provide quality services efficiently and in a cost-effective manner
- Coordinate with community centers and service providers to share services and facilities



WATERFRONT REDEVELOPMENT & REVITALIZATION

OPPORTUNITY AREA #3

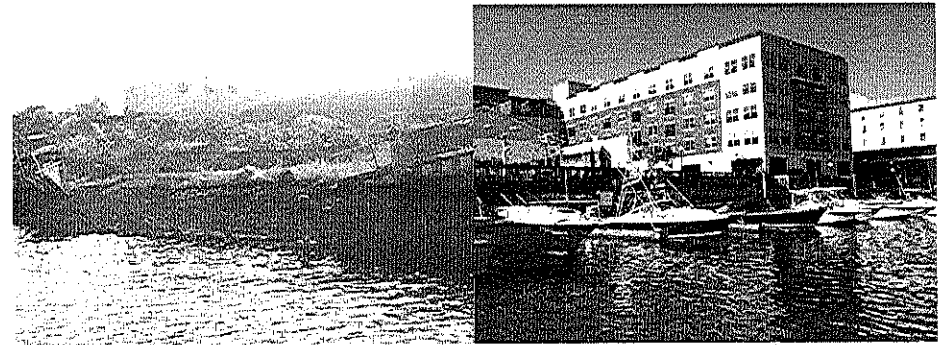
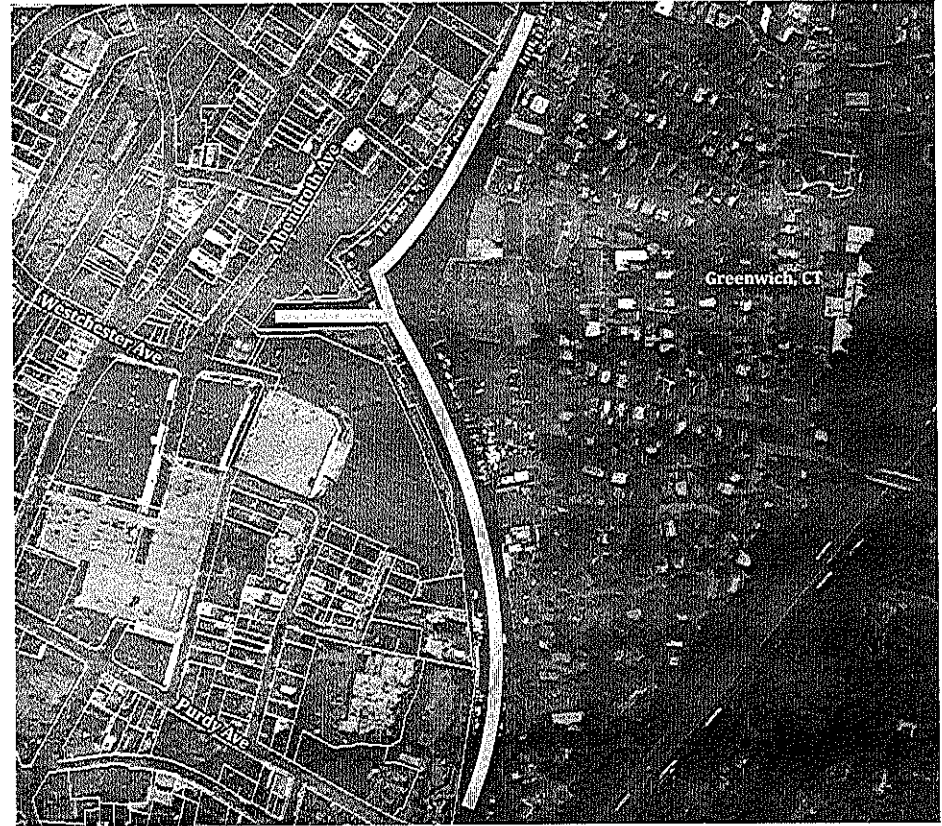


STRATEGIC PLANNING GOALS

COMPREHENSIVE PLAN CONSISTENCY

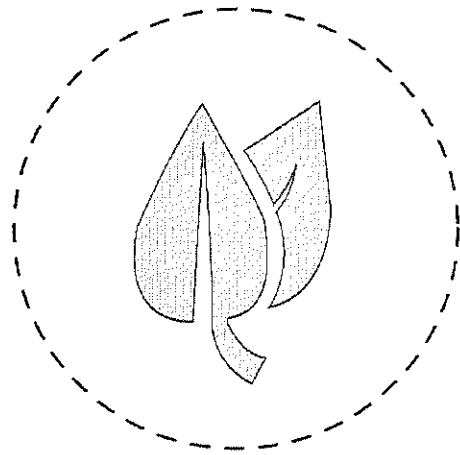
The promotion of appropriately-scaled and attractive development that does not negatively impact the natural environment will enhance and revitalize Port Chester's waterfront in addition to providing new opportunities for public-waterfront interfacing.

- Promote the waterfront area as a commercial, recreational and cultural destination
- Improve Port Chester's commercial areas in the downtown to encourage new investment and create more attractive locations for visitors and businesses
- Connect neighborhoods, parks and the waterfront through various transportation networks



FOX ISLAND PENINSULA REDEVELOPMENT

OPPORTUNITY AREA #4

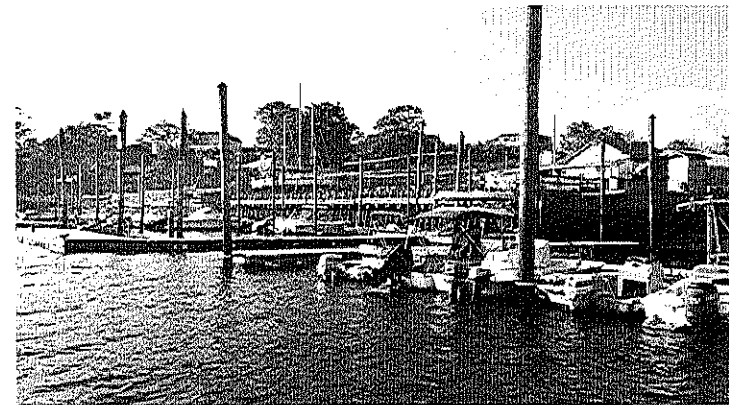
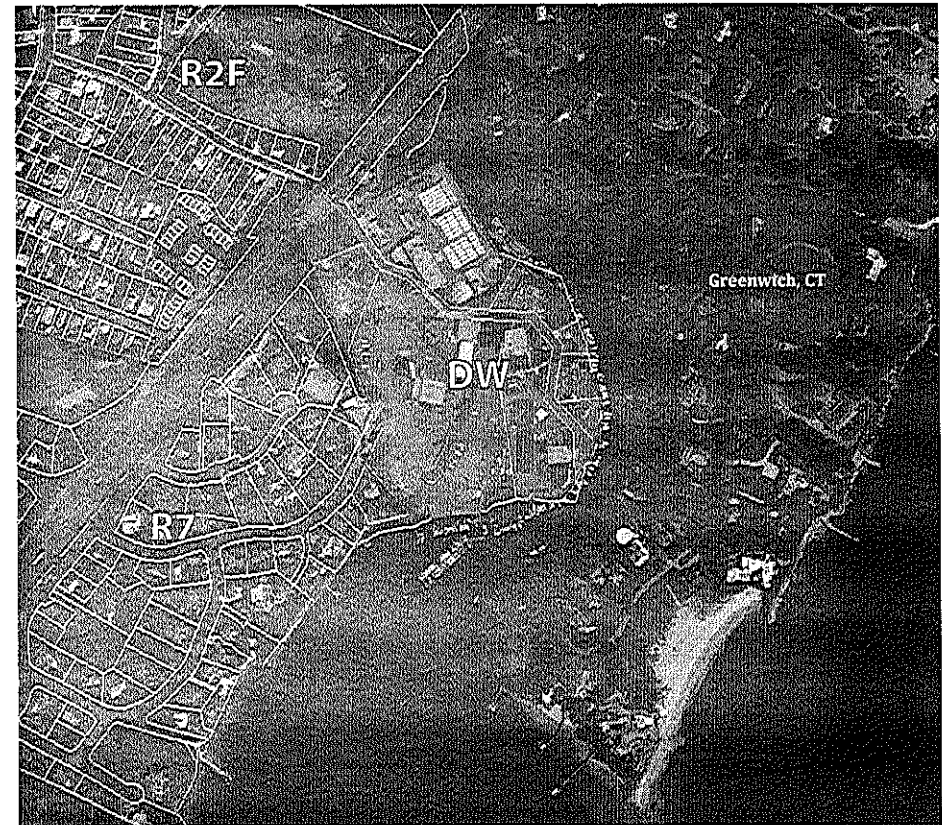


STRATEGIC PLANNING GOALS

COMPREHENSIVE PLAN CONSISTENCY

Opportunities for the Fox Island Peninsula include new, “wharf-type” development, featuring restaurants, commercial, office, and residential uses. Providing new public open spaces and waterfront accessibility is paramount. Relocating the existing Department of Public Works facility is crucial for redevelopment to occur.

- Promote the waterfront area as a commercial, recreational and cultural destination
- Encourage a balanced range of housing types and densities that consider the associated costs of servicing future density
- Connect neighborhoods, parks and the waterfront through various transportation networks



FORMER UNITED HOSPITAL SITE REDEVELOPMENT

OPPORTUNITY AREA #5

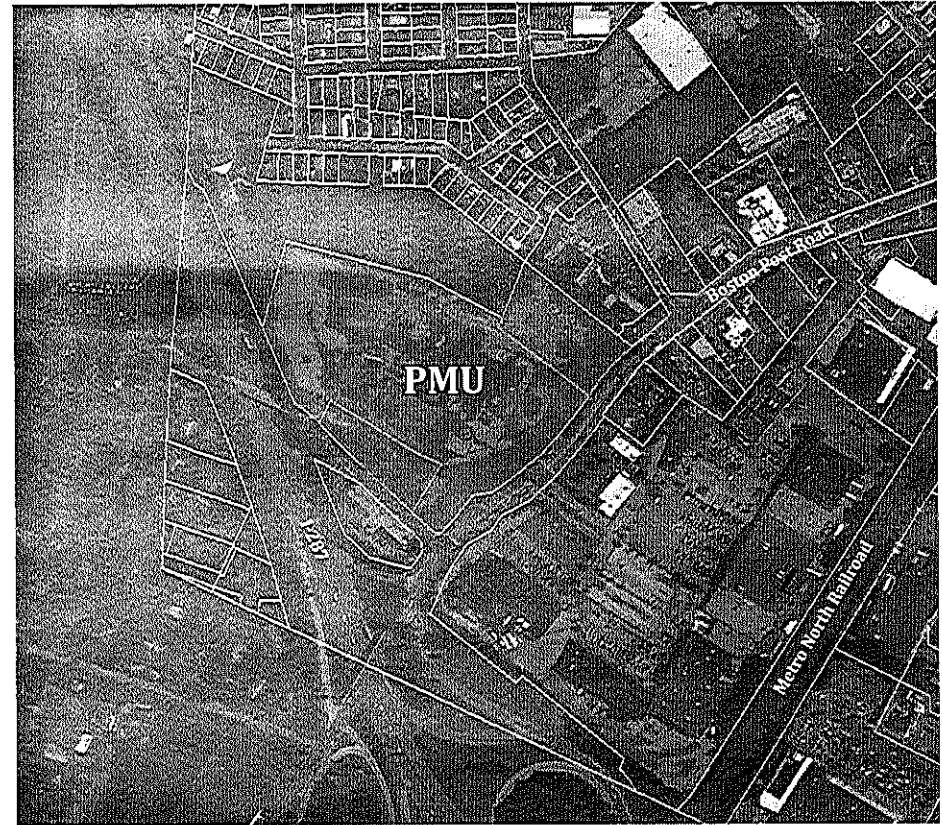


STRATEGIC PLANNING GOALS

COMPREHENSIVE PLAN CONSISTENCY

The former United Hospital site is currently vacant and located on over fifteen acres. Zoned as PMU Planned Mixed Use District, the site can be reactivated as a place-making mixed use development comprising some combination of a hotel/convention, retail stores, restaurants, community facilities and residential development comprised mainly of studio and one-bedroom units. The site should not detract from the existing downtown retail and commercial base.

- Strengthen and expand economic opportunities and ventures to the Village's tax base
- Increase Port Chester's retail capture rate by recruiting new establishments based on market demand
- Actively "brand" the Village to facilitate economic development
- Improve Port Chester's commercial areas to encourage new investment and create more attractive locations for visitors and residents





VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

Discussion of Corenthal Correspondence to Village Attorney

Summary

Background:

A letter from Richard Corenthal, Esq., the attorney retained by the former paid firefighters, (local IAFF 1971), was received by the Village Attorney's office making a claim about a possible conflict of interest.

Proposed Action

Attachments

Emailed VA



MEYER SUOZZI

Meyer, Suozzi, English & Klein, P.C.

1350 Broadway, Suite 501
P.O. Box 822
New York, New York 10018-0026
Office: 212-239-4999
Fax: 212-239-1311
www.msek.com

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DATE: June 21, 2016

TO: Anthony M. Cerreto, Esq.

FAX #: 914-937-3169
914-939-5208 (tel)

FROM: Richard S. Coenthal

REF #: 24845.19

Number of Pages 3
(including cover):

Description of Document: *Port Chester Professional Firefighters Association, Local 1971, IAFF, AFL-CIO and Village of Port Chester*

(Conflict of Interest – Board of Ethics Complaint)

VILLAGE OF PORT CHESTER
JUN 21 2016
RECEIVED VA

COMMENTS:

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MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

COUNSELORS AT LAW

990 STEWART AVENUE, SUITE 300
P.O. BOX 9194
GARDEN CITY, NEW YORK 11530-9194
516-741-6565
FACSIMILE: 516-741-6706

ONE COMMERCE PLAZA
SUITE 1705
ALBANY, NEW YORK 12260
518-465-5551
FACSIMILE: 518-465-2033

1350 BROADWAY, SUITE 501
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NEW YORK, NEW YORK 10018-0026
212-239-4999
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E-MAIL: meyersuozzi@msck.com
WEBSITE: <http://www.msck.com>

1300 CONNECTICUT AVENUE, N.W.
SUITE 600
WASHINGTON, DC 20036
202-496-2103
FACSIMILE: 202-223-0358

RICHARD S. CORENTHAL
DIRECT DIAL: 212-763-7022
E-MAIL RCORENTHAL@MSEK.COM

June 21, 2016

Via Facsimile and First Class Mail

Anthony M. Cerreto, Esq.
Village Attorney
Village of Port Chester
222 Grace Church Street
Port Chester, New York 10573

***Re: Port Chester Professional Firefighters Association, Local 1971, IAFF,
AFL-CIO and Village of Port Chester
(Conflict of Interest – Board of Ethics Complaint)***

Dear Mr. Cerreto:

We represent the Port Chester Professional Firefighters Association, Local 1971, IAFF, AFL-CIO ("Local 1971"). This is a complaint against Trustee Bart Didden and Fire Chief Quinn under the Village's Code of Ethics. We have received information that Trustee Bart Didden is President of USA Central Station Alarm Corp. USA Central Station Alarm's marketing slogan on its website is "Security for an Insecure World." As you know, Trustee Didden voted last evening against the Resolution to reinstate the Village's eight paid Professional Fire Fighters (the "Professional Fire Fighters"). The abolishment of the Professional Fire Fighters has raised a serious public safety issue. Numerous speakers at the Trustees' meetings with backgrounds in fire service and fire fighting have discussed the potential negative impact that the abolishment of the Professional Fire Fighters will have on response times to fire calls. Mayor Pilla publicly stated last evening that the delay in volunteer response time to a fire played a factor in his decision to vote in support of the Resolution to reinstate the Professional Fire Fighters. The delay and negative impact on response times may lead residents to purchase automatic fire alarms with "central station" connections from Mr. Didden's company which is located in Port Chester. Faster electronic notification of a fire may be the response of "insecure" residents to the delay caused by the Village's abolishment of the Professional Fire Fighters. It goes without saying that Mr. Diddon then stands to benefit financially from the increased sale of automatic fire alarms with connection to his "central station" monitoring company.

Anthony M Cerreto, Esq.

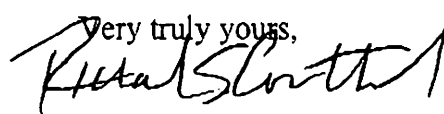
June 21, 2016

Page 2

Section 53-2 of the Village's Code of Ethics states "[n]o official...of the village shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in conflict with, or might reasonably tend to conflict with, the proper discharge of his duties in the public interest. Section 53-4 of the Code of Ethics requires public disclosure of such interest, whether direct or indirect "on the official record and nature and extent of such interest" and written disclosure to the Board of Trustees. We are advised that Trustee Didden has failed to disclose his "interest" as required by the Code of Ethics prior to participating and voting on whether to abolish the Professional Fire Fighters as well as on last evening's vote to reinstate the Professional Fire Fighters. Such conduct plainly violates the Code of Ethics. Trustee Didden should have been recused from voting on all matters relating to the abolishment of the paid Fire Fighters. Trustee Didden is apparently aware of his obligations under the Code of Ethics since he tried to prevent Trustee Marino from voting on the Resolution to reinstate the Professional Fire Fighters.

In addition, we understand that Fire Chief Ed Quinn is employed by Selective Insurance Group which is in the business of providing "property and casualty insurance products." This type of business could benefit from the payment of higher insurance premiums by Village residents caused by higher ISO ratings which may occur as a result of the abolishment of the Professional Fire Fighters. It's a matter of public record that the Trustees relied on Chief Quinn's assurance that he could maintain fire service in the Village if the Professional Fire Fighters were abolished. Chief Quinn's failure to disclose his potential "interest" in the abolishment of the Professional Fire Fighters also violates the Code of Ethics.

As a result of the above violations, we hereby request that the decisions of the Board of Trustees to abolish the Professional Fire Fighters and the decision of the Board of Trustees not to reinstate the Professional Fire Fighters be deemed null and void since it violates the Code of Ethics. Accordingly, we request that the Professional Fire Fighters be reinstated immediately to their former positions. Please provide me with your response within five days. Thank you.

Very truly yours,


Richard S. Corenthal

RSC:mdc

cc: Village of Port Chester Board of Ethics
(Attention: Alejandro Payan, Evelyn Petrone, Esq., Rabbi Jaymee Alpert
and Robin Smith),
Mayor Dennis G. Pilla (via fax and first class mail)
Board of Trustees, Village of Port Chester (via fax and first class mail)
Mr. Vinny Lyons, President, Local 1971, IAFF, AFL-CIO



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

SENCN- 01
BOT 7-5-2016

AGENDA MEMO

Senior Community Center

Village BOT Meeting Date: 7/5/2016

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact	x		Public Hearing Required		x
Funding Source: Westchester County/Village			BID #		
Account -6720.459			Strategic Plan Priority Area		
			Enhance Organization		
Agreement	x		Manager Priorities		
Strategic Plan Related		x	N/A		

Sponsor's Name: Carol Nielsen, Director of Senior Programs & Services

Agenda Heading Title

(Will appear as indicated below on Agenda)

Resolution by the Board authorizing the Village Manager to enter into agreements with Ms. Judith A. Cascio, Mr. Domingo Colon, Ms. Susan Sabato, and Kathleen Pasquale, for recreational programs for the senior citizens of the Port Chester Senior Community Center.

Summary

Background: Agreements are for: Ms. Judith A. Cascio, Zumba instructor-\$50 per class, Domingo Colon, Tai Chi instructor,-\$75 per class, Mrs. Susan Sabato, arts & craft & Bingo instructor,-\$25 per session, Mrs. Kathleen Pasquale, art instructor-\$75 per class.

Proposed Action

That the Board of Trustees adopt the Resolution

Attachments

Agreements, Agenda Memo, Resolution

RESOLUTION
AGREEMENTS FOR SENIOR CITIZENS PROGRAMS

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village of Port Chester Senior Citizen Program requires instructors; and

WHEREAS, such services have been appropriated in the 2016 to 2017 Village Budget; and

WHEREAS, the Director of the Senior Program has selected several providers to facilitate these programs. Now, therefore be it

RESOVLED, that the Board of Trustees hereby authorizes the Village Manager to enter into the following agreements with regard to the Village of Port Chester Senior Citizens Programs;

- Susan Sabato, 26 Linden Street, Port Chester, NY. 10573 Arts & Crafts/Bingo Instructor \$25.00 per session, (4 classes a month)
- Domingo Colon, Tai Chi School of Westchester, 40 Crestview St. Bronxville, NY 10801 \$75 per class (classes twice a month)
- Kathleen Pasquale, Art Instructor, 2946 Quinlan Street, Yorktown Heights, NY 10598 \$75. per class. (classes are 1 ½ hrs. once a week 4x a month).
- Judith A. Cascio, Zumba Instructor, 377 Westchester Avenue Apt. 2-L, Port Chester, NY 10573.

APPROVED AS TO FORM:

Village Attorney, Anthony Cerreto

AYES:

NOES:

ABSENT:

DATE:

AGREEMENT

This AGREEMENT, entered into this _____ day of July, 2016, by and between the VILLAGE OF PORT CHESTER, a municipal corporation with an office at 222 Grace Church Street, Port Chester, hereinafter referred to as the "VILLAGE" And KATHLEEN PASQUALE, hereinafter referred to as the "CONTRACTOR."

WITNESSETH

WHEREAS, the Village's Senior Citizen Program requires instructors; and

WHEREAS, the Contractor has demonstrated that is possesses the skills and abilities necessary to successfully assist the Village in this regard; and

WHEREAS, the Board of Trustees authorizes the Village Manager to enter into this Agreement as in the best interest of the Village.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Scope of Services

The Village hereby contracts with Contractor to provide a Oil Painting class every Friday to all Port Chester Residents who are duly registered at the Port Chester Senior/Community Center for such class (hereinafter termed as "the services"). The Contractor shall notify the Port Chester Senior/Community Center Director sufficiently in advance in the event of cancellations due to weather or personal reasons. The Contractor shall leave the room, tables and chairs that are provided for the class and surrounding area as it was before each class. The Contractor shall report anything broken or not functioning.

2. Term

The term of this agreement is July 1, 2016 and ending May 31, 2017, unless the Services set forth in the previous paragraph are earlier completed in which case this agreement shall terminate upon completion of such services.

3. Compensation

The Village shall pay the Contractor \$75.00 per class (class will be 1 ½ hours) for providing the Services.

4. Independent Contractor

In performing the Services, the Contractor shall be and at all times acting and performing as an independent contractor. Nothing in this agreement is intended to create an employer/employee relationship or to allow the Village to exercise control or direction over the manner or method by which the Contractor performs the Services which are the subject of this agreement. It is understood that the Contractor may perform similar services to others besides the Village.

In no event shall the Village be responsible to the Contractor for the payment of any fringe benefits, pension, workers compensation or other benefits that may usually accrue to employees of the Village.

5. Invoicing

Invoices for payment shall be submitted to the Port Chester Senior Nutrition for verification and forwarded to the Village of Port Chester Finance Department.

6. Indemnification

The Contractor agrees to indemnify and hold harmless the Village and its officers, agents and employees from any all claims, demands, costs, actions, causes of action, proceedings, expenses, losses, damages and liabilities, including attorneys fees, resulting from or caused by the willful or negligent omissions and/or acts of the Contractor in the performance of the Services.

7. Assignment

This agreement is predicated upon the unique skill, knowledge and expertise of the Contractor and is personal to the Contractor and may not be assigned.

8. Termination

This agreement may be terminated if the Contractor fails to perform the Services in a manner satisfactory to the Village.

9. Notices

(i) If to Contractor:

Kathleen Pasquale d/b/a Kathleen Pasquale Design and Illustration
2946 Quinlan Street
Yorktown Heights, NY 10598

(ii) If to Village:

Christopher D. Steers, Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, NY 10573

10. Compliance

Contractor acknowledges the Village's Anti-Discrimination and Harrassment Policy copy of which is annexed hereto.

11. Miscellaneous

This agreement embodies all of the representatives, warranties and agreements between the parties relating to the Contractor. No other representatives, warranties, covenants, understanding or agreements exist between the parties hereto. This agreement shall supersede all agreements, written or oral, relating to the retainer of the Contractor. This agreement may not be amended, modified or terminated except by in writing, signed by the parties.

12. Dispute Resolution

In the event of a dispute or controversy between the parties arising out or relating to this Agreement, the parties agree that such disputes will be adjudicated in a court of competent jurisdiction in the State of New York.

13. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

14. Interpretation/Severability

The captions set forth in this agreement are for convenience only and shall not be considered as part of this agreement or in any way limiting or amplifying its terms or provisions.

Each section, subsection and lesser section of this agreement constitutes a separate and distinct undertaking, covenant and/or provision. In the event that any provision of this agreement is determined to be unlawful, such provision shall be deemed to be severed from this agreement, but every other provision of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

VILLAGE OF PORT CHESTER

KATHLEEN PASQUALE

Christopher D. Steers
Village Manager

Contractor-d/b/a Kathleen Paquale Design
and Illustration

Approved as to Form:

Anthony M. Cerreto
Village Attorney

AGREEMENT

This AGREEMENT, entered into this _____ day of July, 2016 by and between the VILLAGE OF PORT CHESTER, hereinafter referred to as the “VILLAGE” and Ms. Judith A. Cascio, 377 Westchester Avenue Apt. 2-L Port Chester, NY 10573 , hereinafter referred to as the “CONTRACTOR.”

WITNESSETH

WHEREAS, the Village’s Senior Citizen Program requires instructors; and

WHEREAS, the Contractor has demonstrated that it possesses the skills and abilities necessary to successfully assist the Village in this regard; and

WHEREAS, the Board of Trustees authorizes the Village Manager to enter into this Agreement as in the best interest of the Village.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Scope of Services

The Village hereby contracts with Contractor for Judith A. Cascio, to provide Zumba classes every Thursday to all Port Chester residents who are duly registered at the Port Chester Senior/Community Center for such class. The Contractor shall notify the Port Chester Senior/Community Center Director sufficiently in advance in the event of cancellations due to weather or personal reasons. The Contractor shall leave the room, tables and chairs that are provided for the class and surrounding area as it was before each class. The Contractor shall report anything broken or nor functioning.

2. Term

The term of this agreement is July 1, 2016 and ending May 31, 2017, unless the Services set forth in the previous paragraph are earlier completed in which case this agreement shall terminate upon completion of such services.

3. Compensation

The Village shall pay the Contractor \$50 per class (one hour) for providing the Services.

4. Independent Contractor

In performing the Services, the Contractor shall be and at all times acting and performing as an independent contractor. Nothing in this agreement is intended to create an employer/employee relationship or to allow the Village to exercise control or direction over the manner or method by which the Contractor performs the Services which are the subject of this agreement. It is understood that the Contractor may perform similar services to others besides the Village.

In no event shall the Village be responsible to the Contractor for the payment of any fringe benefits, pension, workers compensation or other benefits that may usually accrue to employees of the Village.

5. Invoicing

Invoices for payment shall be submitted to the Village Finance Office.

6. Indemnification

The Contractor agrees to indemnify and hold harmless the Village and its officers, agents and employees from any all claims, demands, costs, actions, causes of action, proceedings, expenses, losses, damages and liabilities, including attorneys fees, resulting from or caused by the willful or negligent omissions and/or acts of the Contractor in the performance of the Services.

7. Assignment

This agreement is predicated upon the unique skill, knowledge and expertise of the Contractor and is personal to the Contractor and may not be assigned.

8. Termination

This agreement may be terminated if the Contractor fails to perform the Services in a manner satisfactory to the Village.

9. Notices

(i) If to Contractor:

Ms. Judith A. Cascio
377 Westchester Avenue Apt. 2L
Port Chester, NY 10573

(ii) If to Village:

Christopher D. Steers
Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, NY 10573

10. Compliance

Contractor acknowledges the Village's Ant-Discrimination and Harassment Policy copy of which is annexed hereto.

11. Miscellaneous

This agreement embodies all of the representatives, warranties and agreements between the parties relating to the Contractor. No other representatives, warranties, covenants, understanding or agreements exist between the parties hereto. This agreement shall supersede all agreements, written or oral, relating to the retainer of the Contractor. This agreement may not be amended, modified or terminated except by in writing signed by the parties.

12. Dispute Resolution

In the event of a dispute or controversy between the parties arising out or relating to this Agreement, the parties agree that such disputes will be adjudicated in a court of competent jurisdiction in the State of New York.

13. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

14. Interpretation/Severability

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Each section, subsection and lesser section of this agreement constitutes a separate and distinct undertaking, covenant and/or provision. In the event that any provision of this agreement is determined to be unlawful, such provision shall be deemed to be severed from this agreement, but every other provision of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

VILLAGE OF PORT CHESTER

Ms. Judith A. Cascio

Christopher D. Steers
Village Manager

Contractor – Judith A. Cascio

Approved as to Form:

Anthony M. Cerreto
Village Attorney

AGREEMENT

This AGREEMENT, entered into this _____ day of July, 2016, by and between the VILLAGE OF PORT CHESTER, hereinafter referred to as the “VILLAGE” And, Domingo Colon, Westchester School of Tai Chi, hereinafter referred to as the “CONTRACTOR.”

WITNESSETH

WHEREAS, the Village’s Senior Citizen Program requires instructors; and

WHEREAS, the Contractor has demonstrated that it possesses the skills and abilities necessary to successfully assist the Village in this regard; and

WHEREAS, the Board of Trustees authorizes the Village Manager to enter into this Agreement as in the best interest of the Village.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Scope of Services

The Village hereby contracts with Contractor to provide a Tai Chi Class to all Port Chester residents who are duly registered at the Port Chester Senior/Community Center for such class (hereinafter termed as “the Services”). The Contractor shall notify the Port Chester Senior/Community Center Director sufficiently in advance in the event of cancellations due to weather or personal reasons. The Contractor shall leave the room, tables and chairs that are provided for the class and surrounding area as it was before each class. The Contractor shall report anything broken or nor functioning.

2. Term

The term of this agreement is July 1, 2016 and ending May 31, 2017, unless the Services set forth in the previous paragraph are earlier completed in which case this agreement shall terminate upon completion of such services.

3. Compensation

The Village shall pay the Contractor \$75. per class (class will be 1 hours) for providing the Services.

4. Independent Contractor

In performing the Services, the Contractor shall be and at all times acting and performing as an independent contractor. Nothing in this agreement is intended to create an employer/employee relationship or to allow the Village to exercise control or direction over the manner or method by which the Contractor performs the Services which are the subject of this agreement. It is understood that the Contractor may perform similar services to others besides the Village.

In no event shall the Village be responsible to the Contractor for the payment of any fringe benefits, pension, workers compensation or other benefits that may usually accrue to employees of the Village.

5. Invoicing

Invoices for payment shall be submitted to the Village Finance Office.

6. Indemnification

The Contractor agrees to indemnify and hold harmless the Village and its officers, agents and employees from any all claims, demands, costs, actions, causes of action, proceedings, expenses, losses, damages and liabilities, including attorneys fees, resulting from or caused by the willful or negligent omissions and/or acts of the Contractor in the performance of the Services.

7. Assignment

This agreement is predicated upon the unique skill, knowledge and expertise of the Contractor and is personal to the Contractor and may not be assigned.

8. Termination

This agreement may be terminated if the Contractor fails to perform the Services in a manner satisfactory to the Village.

9. Notices

(i) If to Contractor:

Domingo Colon
49 Crestview Street
New Rochelle, New York 10801

(ii) If to Village:

Christopher D. Steers
Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, NY 10573

10. Compliance

Contractor acknowledges the Village's Ant-Discrimination and Harassment Policy copy of which is annexed hereto.

11. Miscellaneous

This agreement embodies all of the representatives, warranties and agreements between the parties relating to the Contractor. No other representatives, warranties, covenants, understanding or agreements exist between the parties hereto. This agreement shall supersede all agreements, written or oral, relating to the retainer of the Contractor. This agreement may not be amended, modified or terminated except by in writing signed by the parties.

12. Dispute Resolution

In the event of a dispute or controversy between the parties arising out or relating to this Agreement, the parties agree that such disputes will be adjudicated in a court of competent jurisdiction in the State of New York.

13. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

14. Interpretation/Severability

The captions set forth in this agreement are for convenience only and shall not be considered as part of this agreement or in any way limiting or amplifying its terms or provisions.

Each section, subsection and lesser section of this agreement constitutes a separate and distinct undertaking, covenant and/or provision. In the event that any provision of this agreement is determined to be unlawful, such provision shall be deemed to be severed from this agreement, but every other provision of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

VILLAGE OF PORT CHESTER

DOMINGO COLON

Christopher D. Steers
Village Manager

Contractor

Approved as to Form:

Anthony M. Cerreto
Village Attorney

AGREEMENT

This AGREEMENT, entered into this _____ day of July, 2016, by and between the VILLAGE OF PORT CHESTER, hereinafter referred to as the “VILLAGE” and SUE SABATO, 26 LINDEN STREET, PORT CHESTER, NY 10573 hereinafter referred to as the “CONTRACTOR”.

WITNESSETH

WHEREAS, the Village’s Senior Citizen Program requires instructors; and

WHEREAS, the Contractor has demonstrated that it possesses the skills and abilities necessary to successfully assist the Village in this regard; and

WHEREAS, the Village Manager is authorized to enter into this Agreement as in the best interest of the Village.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. Scope of Services

The Village hereby contracts with Contractor to provide as the arts & crafts, bingo instructor every Saturday to all Port Chester residents who are duly registered at the Port Chester Senior/Community Center for such program. The Contractor shall notify the Port Chester Senior/Community Center Director sufficiently in advance in the event of cancellations due to weather or personal reasons. The Contractor shall leave the room, tables and chairs that are provided for the program and surrounding area as it was before each class. The Contractor shall report anything broken or nor functioning.

2. Term

The term of this agreement is July 1, 2016 and ending May 31, 2017, unless the Services set forth in the previous paragraph are earlier completed in which case this agreement shall terminate upon completion of such services.

3. Compensation

The Village shall pay the Contractor \$25 per session, session will be on Saturday.

4. Independent Contractor

In performing the Services, the Contractor shall be and at all times acting and performing as an independent contractor. Nothing in this agreement is intended to create an employer/employee relationship or to allow the Village to exercise control or direction over the manner or method by which the Contractor performs the Services which are the

subject of this agreement. It is understood that the Contractor may perform similar services to others besides the Village.

In no event shall the Village be responsible to the Contractor for the payment of any fringe benefits, pension, workers compensation or other benefits that may usually accrue to employees of the Village.

5. Invoicing

Invoices for payment shall be submitted to the Village Finance Office.

6. Indemnification

The Contractor agrees to indemnify and hold harmless the Village and its officers, agents and employees from any all claims, demands, costs, actions, causes of action, proceedings, expenses, losses, damages and liabilities, including attorneys fees, resulting from or caused by the willful or negligent omissions and/or acts of the Contractor in the performance of the Services.

7. Assignment

This agreement is predicated upon the unique skill, knowledge and expertise of the Contractor and is personal to the Contractor and may not be assigned.

8. Termination

This agreement may be terminated if the Contractor fails to perform the Services in a manner satisfactory to the Village.

9. Notices

(i) If to Contractor:

SUE SABATO
26 Linden Street
Port Chester, NY 10573

(ii) If to Village:

Christopher D. Steers
Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, NY 10573

10. Miscellaneous

This agreement embodies all of the representatives, warranties and agreements between the parties relating to the Contractor. No other representatives, warranties, covenants,

understanding or agreements exist between the parties hereto. This agreement shall supersede all agreements, written or oral, relating to the retainer of the Contractor. This agreement may not be amended, modified or terminated except by in writing signed by the parties.

11. Dispute Resolution

In the event of a dispute or controversy between the parties arising out or relating to this Agreement, the parties agree that such disputes will be adjudicated in a court of competent jurisdiction in the State of New York.

12. Governing Law

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

13. Interpretation/Severability

The captions set forth in this agreement are for convenience only and shall not be considered as part of this agreement or in any way limiting or amplifying its terms or provisions.

Each section, subsection and lesser section of this agreement constitutes a separate and distinct undertaking, covenant and/or provision. In the event that any provision of this agreement is determined to be unlawful, such provision shall be deemed to be severed from this agreement, but every other provision of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered as of the date first above written.

VILLAGE OF PORT CHESTER

SUE SABATO

Christopher D. Steers
Village Manager

Contractor

Approved as to Form:

Anthony M. Cerreto
Village Attorney



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Planning and Development Department
Department: Office of the Village Attorney

BOT Meeting Date: 7/5/2016

Item Type: Discussion

Sponsor's Name:	Anthony Cerreto, Village Attorney
Sponsor's Name:	Eric Zamft, Director of Planning & Economic Development

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
			Transit Oriented Development		
	Yes	No			
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Planning & Zoning		

Agenda Heading Title
(Will appear as indicated below on Agenda)

Zoning for Microbreweries and Micro-Alcohol Establishments

Summary

In the Spring, the Department of Planning & Economic Development researched the current trends in providing appropriate zoning for microbreweries and micro-alcohol establishments. That research was summarized in a May 2, 2016 Memorandum and discussed at the May 2, 2016 Board of Trustees meeting. The memorandum is provided again for the Board's convenience.

Overview of Suggested Zoning Amendments

The Department of Planning & Economic Development is currently working with the Village Attorney to draft a local law that would permit microbreweries and micro-alcohol establishments. The local law would:

- Add new definitions for BREWERY, BREWPUB, DISTILLERY, MICROBREWERY, MICRODISTILLERY, MICROWINERY, NANOBREWERY, TASTING ROOM, and WINERY
- Permit Brewery, Distillery, and Winery in M1 and M2 Districts
- Permit Brewpub in C1, C2, C3, C4, C5, C5T, CD, CDS Districts and as a special exception use in the DW and DW2 Districts (same as TABLE SERVICE RESTAURANT)
- Permit Microbrewery, Microdistillery, Microwinery, and Nanobrewery (including Tasting Rooms) in the C2, C5, and C5T Districts and as a special exception use in the DW and DW2 Districts.
- Include specific criteria for such uses related to odors, water usage, and effluent.

Next Steps

The next steps are as follows:

- Planning & Economic Development working with Attorney's Office on draft zoning, which will be ready for the 7/18 BOT meeting (along with SEQRA documentation)
- 7/18 – Presentation and resolution: Determine SEQRA Classification as Unlisted, BOT Declaration of Intent to be Lead Agency, Refer to Planning Commission and Westchester County
- Wait 30 days
- 8/1 – BOT Declare Lead Agency, Set public hearing for 9/6
- 9/6 – BOT open public hearing
- SEQRA Negative Declaration
- Approval of Zoning Amendments

Attachments
<ul style="list-style-type: none">• Department of Planning & Economic Development Research Memorandum



VILLAGE OF PORT CHESTER
DEPARTMENT OF PLANNING & ECONOMIC
DEVELOPMENT

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Eric Zamft, AICP, Director
Andrea Sherman, Assistant Planner
Constance Phillips, Planning Commission Secretary

MEMORANDUM

From: Department of Planning & Economic Development
To: Village Manager
Date: May 2, 2016
RE: Department Research on Microbreweries and Micro-Alcohol Establishments

“Craft breweries are a significant sector in our agricultural and tourism industries, and when they do well, our economy does well. I encourage New Yorkers to sample all of what our craft brewers have to offer.” – Governor Andrew M. Cuomo

The Department of Planning & Economic Development has received a number of inquiries on the possibility of opening up non-bar, alcohol-related establishments within the Village. The memorandum serves to begin the discussion of potentially accommodating different types of alcohol-related uses within the Village.

Microbreweries, nanobreweries, tasting rooms, and micro-alcohol production are a growing trend, as will be presented below. However, Port Chester’s Zoning Code lacks the provisions for these types of uses – uses that encompass production, consumption, and/or sale or alcoholic beverages – and does not allow production and consumption to coexist in the same location and does not permit alcohol production in Downtown.

Much of the information provided in the memorandum is based upon a Planning Advisory Service briefing (a service of the American Planning Association) on the topic. The Planning Advisory Service briefing is attached for further background.

Background

For decades, cities did not differentiate alcohol production by size/volume. This was primarily because, post-prohibition, there were relatively few producers and many were larger macro-scale facilities that clearly belonged in industrial areas. Many communities, including Port Chester, as will be discussed below, have historically regulated breweries this way. This was further exacerbated by consolidation during the early 20th Century. Beginning in the early 1980s, however, there was resurgence in small-scale alcohol production linked to local identity and artistic approaches to alcohol production. This was initially limited to brewing of beer and ale (microbreweries), but increases are now being seen with micro-scale distilling and wine making.

In November, 2014, Governor Cuomo signed the Craft New York Act and designated \$3 million in funds to promote New York's alcoholic beverage producers. The Law reduces producers' requirements and restrictions in an effort to develop the craft beverage industry within the state. Under this provision, producers can legally conduct tastings and serve "by the bottle" and "by the glass." Further, farm distilleries that use New York grown production inputs can increase retail operations and offer product samples.

With this funding source and with an increased demand for craft beer, microbreweries have flourished throughout the country, including within New York State and the New York Metropolitan Region. Unlike larger breweries, as well as bars or taverns, these small breweries often focus on quality craft beer, with less emphasis on restaurant services. These microbreweries are also becoming catalysts to retail and tourism activities and are increasingly locating in downtowns, industrial areas, and other more urban settings. The typical microbrewery (as well as microdistillery and microwinery) may offer tours of their production areas, tasting rooms, and products for on-site retail sales. Like microbreweries, microdistilleries and microwineries are very similar in function and they have also begun to experience a renaissance both nationally and within New York State and the Region.

Existing Code

Port Chester's existing Code has a definition for "**Bar or Tavern**" which establishes "*a business use or establishment which is primarily engaged in the sale and service of alcoholic beverages for on-premises consumption, subject to the regulatory authority of the New York State Liquor Authority.*" Current Code also defines "**Nonnuisance Industry**" as small-scale, indoor production that has no detriment to the environment by nature of odors, noise, waste, or traffic congestion. There are two distilleries located within the Village that are classified as Nonnuisance Industries and received Certificates of Occupancy under this designation.

Bar or Tavern and **Nonnuisance Industry**, are not permitted in the same districts.

- **Bars/taverns** are permitted primarily in Downtown through as-of-right use in the C2 Main Street Business District, the C5 Train Station Mixed-Use District, the C5T Downtown Mixed-Use Transitional District, and the PMU Planned Mixed-Use District.
- **Nonnuisance Industries** are permitted primarily in Industrial Districts through as-of-right use in the C4 General Commercial District, the M1 Light Industrial District, and the M2 General Industrial District. Nonnuisance Industries are also permitted by special exception use in the DW Design Waterfront District and the DW2 Downtown Design Waterfront District.

Based on these differences in permitted locations within the Village, there is no zoning that allows for both the production and consumption of alcohol products on the same premises.

Research

According to the Brewers Association, nationally, the craft brewery sector has added 5,000 jobs annually in recent years. As the market for craft beer, wines, and distilled alcohol has grown and the land use has become more popular, a large number of communities have

addressed this activity in their zoning ordinances. Generally, these operations have been seen as appropriate for commercial and mixed use districts (in addition to the traditional industrial districts), particularly in association with other retail, eating, and drinking establishments.

Communities throughout the country are beginning to adopt use definitions for different categories of small-scale alcohol production.

- **Brewpubs** are restaurants that brew beer for on-site consumption or for off-site distribution.
- **Microbreweries** are beer manufacturing facilities with annual production limits set by the municipality. Production maximums are generally in the range of 10,000 to 60,000 barrels per year.
- **Nanobreweries** are also beer manufacturing facilities but have lower production maximums as set by the municipality. These limits are generally 15,000 barrels per year or lower.
- **Microdistilleries** are alcoholic spirit manufacturing sites that typically contain tasting rooms and/or off-site distribution. This use also has a municipality-determined production maximum.
- **Microwineries** are wine manufacturing facilities with annual production limits set by the municipality. All of these uses allow for a combination of on-site production and consumption, off-site distribution, and on-site food sale.

Many communities in southern and western states have adopted zoning legislation to allow alcohol production and consumption in downtown areas. In Colorado, for example, microbreweries and tasting rooms are social gathering places in the downtown. A recent *Planning* magazine article highlighted the benefits and challenges of alcohol-related establishments in downtown areas, with a focus on Colorado, California, and Montana.

Although the south and west have been on the forefront of micro-alcohol facilities, especially in downtown areas, there has been limited, to date, application in New York. Communities such as Syracuse and Dryden have microbreweries in their commercial districts. More locally, the City of Beacon has use definitions for “Microbrewery,” and “Microdistillery” that limit production at 5,000 barrels per year. These uses are permitted in the Local Business, Central Business, and General Business Districts. In the City of Yonkers, brew pubs, in addition to bars and lounges, are permitted as an accessory use in the South Broadway District. While the Department of Planning and Economic Development’s review of other local zoning codes is by no means comprehensive, the sampling of communities in the region shows that there are a limited number of communities with appropriate zoning that can accommodate and regulate micro-alcohol establishments.

To that end, there appears to be a tremendous economic development opportunity for Port Chester to build upon our existing restaurant and downtown “infrastructure” and be on the forefront in the region in considering ways to encourage and integrate micro-alcohol establishments into the community.

Attachments
<ul style="list-style-type: none"><li data-bbox="235 231 454 262">• PAS Report

Zoning for Micro-Alcohol Production

The Planning Advisory Service (PAS) researchers are pleased to provide you with information from our world-class planning library. This packet represents a typical collection of documents PAS provides in response to research inquiries from our subscribers. For more information about PAS visit www.planning.org/pas.



American Planning Association

Making Great Communities Happen

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Foreword

Traditionally, relatively few communities have defined and regulated low-volume alcohol production facilities as distinct uses in their zoning codes. However, in recent years renewed interest in craft brewing and distilling, as well as small-batch wine production, has prompted a number of communities to update their codes to sanction small-scale producers in a wider range of zoning districts. Now, there are a number of communities across the country that have added definitions, use permissions, and, in some cases, use-specific standards for brewpubs, microbreweries, microdistilleries, or microwineries to their zoning codes. Generally speaking, the intent is to create space for smaller producers to operate outside of industrial districts.

While there is general agreement on the idea that these micro-production facilities produce smaller volumes of alcoholic beverages than conventional breweries, distilleries, and wineries, there is considerable variation from place to place in terms of the specific thresholds or characteristics that distinguish these “micro” producers from their high-volume cousins.

In regard to use permissions, there are a number of communities that permit brewpubs, microbreweries, microdistilleries, or microwineries in one or more mixed-use or commercial districts by right or with a ministerial review. In fact, this seems to be more common than requiring all micro-producers to obtain a discretionary use permit (i.e., a special exception, conditional use, or special use) before locating in a nonindustrial district. The table immediately following this foreword summarizes the use permissions for all examples included in this packet.

So far, use-specific standard for micro-production facilities are relatively rare. Among communities that have added additional standards to their codes, the most common provisions relate to space allocation, outdoor storage, locational criteria or location-based production limits, environmental performance, and compliance with state and local laws related to alcoholic beverage sales. While not represented explicitly in this packet, it is important to note that many other communities permit micro-production facilities either by right or subject to discretionary review without requiring compliance with use-specific standards.

The first section of this packet includes a short article from APA’s *Zoning Practice* discussing overall trends related to zoning for brewpubs, microbreweries, microdistilleries, and microwineries. The following section provides examples of staff reports prepared in response to proposed zoning amendments to sanction one or more varieties of micro-production facilities in nonindustrial districts. The packet concludes with 14 examples of local zoning definitions and use-specific standards for micro-production facilities.

Community	State	2010 Population	Density (pop./square mile)	Defined Uses	Permitted in CBD or Subdistricts		Permitted in One or More Other Mixed Use or Commercial Districts	
					By Right or Ministerial Approval	With Discretionary Approval	By Right or Ministerial Approval	With Discretionary Approval
Asheville	NC	83,393	1,856	microbrewery		X	X	X
Bismarck	ND	61,272	1,986	microbrewery		X		X
Bloomington	IN	80,405	3,472	brewpub	X		X	
Clarksville	TN	132,929	1,362	alcohol distillery, small	X		X	
				brewery, micro	X		X	
Columbia	SC	129,272	978	microbrewery			X	
Covington	KY	40,640	3,079	brewpub	X		X	
				microbrewery		X		X
Dallas	TX	1,197,816	3,518	microbrewery/		X		X
				micro-distillery/ winery				
Goodyear	AZ	65,275	341	brewpub			X	
				microbrewery			X	
Henderson	NV			brew pub/ microbrewery/ craft distillery	X			X
Memphis-Shelby	TN	646,889	2,053	brew pub	X		X	
				microbrewery	X		X	
				microdistillery	X		X	
Novi	MI	55,224	1,825	brewpub		X	X	X
				microbrewery		X	X	X
Rapid City	SD	67,956	1,227	farm winery				X
				microbrewery				X
St. Petersburg	FL	244,769	3,964	brewpub			X	X
				microbrewery			X	X
Tacoma	WA	198,397	3,990	brewpub			X	
				craft production			X	
				microbrewery/ winery			X	

Background

Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

- Provides an overview of issues to consider when drafting zoning standards for brewpubs and micro-production facilities.

Staff Reports Discussing Proposed Zoning Amendments

Anaheim (California), City of. 2014. "Zoning Code Amendment No. 2013-00113 Amending Title 18 of the Anaheim Municipal Code Allowing Alcoholic Beverage Manufacturing, Including Tasting Rooms, within Commercial and Industrial Zones." Council Agenda Report, February 25.

- Discusses a zoning amendment that would add a new definition and use permissions for alcoholic beverage manufacturing in response to a mayoral initiative to attract more craft brewers to the city.

Knoxville (Tennessee), City of. 2013. "An Ordinance to Amend the Knoxville City Code, Appendix B, 'Zoning Regulations,' Articles II, IV and V, Regarding Definitions and Development Standards for Small Breweries, Wineries and Distilleries in Certain Commercial and Industrial Zone Districts." Agenda Information Sheet, October 15.

- Discusses zoning amendment that would add new a new definition, use permissions, and use standards for craft breweries, wineries, and distilleries in response to increased demand and changes in state law.

Minnetonka (Minnesota), City of. 2014. "Ordinance Regarding Microbreweries." Staff report to Planning Commission, February 27.

- Discusses zoning amendment that would add definitions and use permissions for microbreweries in response to increased demand.

Definitions and Standards for Brewpubs and Micro-Production Facilities

Asheville (North Carolina), City of. 2013. *Code of Ordinances*. Chapter 7, Development; Article II, Official Map, Rules of Construction, and Definitions; Section 7-2-5, Definitions. Also, Article XVI, Uses by Right, Subject to Special Requirements and Conditional Uses; Section 7-16-1, Uses by Right, Subject to Special Requirements; part c(43), Microbrewery.

- Defines *microbrewery* and provides standards addressing noise, size, and site design.

Bismarck (North Dakota), City of. 2014. *Code of Ordinances*. Title 14, Zoning; Chapter 14-03, Districts: Uses; Section 14-03-08, Special Uses; part u, Microbrewery. Also, Chapter 14-04, District Regulations; Section 14-04-21.3, Use Categories; part c, Microbrewery. Also, Section 14-04-21.4, Use Standards; part 6, Microbrewery.

- Defines *microbrewery* and provides standards addressing location, neighborhood impacts, storage, and alcoholic beverage sales licenses.

Bloomington (Indiana), City of. 2013. *Unified Development Ordinance*. Chapter 20.05, Development Standards; Section 20.05.089, SC-03 [Special Conditions; Brewpub]. Also, Chapter 20.11, Definitions; Section 20.11.020, Defined Words.

- Defines *brewpub* and provides standards addressing space allocation, production limits, and shipping.

Clarksville (Tennessee), City of. 2013. *Code of Ordinances*. Title 11, Planning and Zoning; Chapter 2, Rules of Interpretation and Definitions; Section 2.2, Definitions. Also, Chapter 3, Zone Districts, Use Tables; Table 3.4.7, Industrial Uses. Also, Chapter 5, Land Use Development Standards and Procedures; Section 5.1.3, Industrial Uses Permitted with Conditions; Alcohol Distillery, Small; Brewery, Micro.

- Defines *small alcohol distillery* and *micro-brewery* and provides standards addressing operations and site design.

Columbia (South Carolina), City of. 2013. *Code of Ordinances*. Chapter 17, Planning, Land Development, and Zoning; Article III, Zoning; Division 1, Generally; Section 17-55, Definitions. Also, Division 8, District Descriptions; Use and Dimensional Regulations; Section 17-290, Microbrewery.

- Defines *microbrewery* and provides standards addressing outdoor storage and production limits.

Covington (Kentucky), City of. 2013. *Code of Ordinances*. Title XV, Land Usage; Appendix A, Zoning Ordinance; Article 6, Use Regulations; Section 6.28, Taverns and Restaurants. Also, Article 16, Definitions; Section 16.02, Use Groups and Categories; Section 16.02.06, Commercial Use Group.

- Defines *brewpub*, *microbrewery*, and *micro-distillery* and provides standards addressing space allocation, production limits, and outdoor storage.

Dallas (Texas), City of. 2013. *City Code*. Chapter 51A, Development Code; Article IV, Zoning Regulations; Section 51A-4.210, Retail and Personal Service Uses; part b(4), Specific Uses – Alcoholic Beverage Establishments.

- Defines *microbrewery*, *microdistillery*, or *winery* and provides standards addressing loading, outdoor storage, and site design.

Goodyear (Arizona), City of. 2013. *Zoning Ordinance*. Article II, Definitions; Section 2-2, Definitions. Also, Article 3, Zoning Districts; Chapter 3-3, Commercial Districts; Section 3-3-3, C-2 General Commercial District; part A, Principal Permitted Uses. Also, Article 4, Special Uses, Uses Requiring Additional Evaluation, Nonconforming Uses and Buildings; Chapter 4-2, Uses Requiring Additional Evaluation; Section 4-2-15, Brewpub. Section 4-2-16, Microbrewery.

- Defines *bar/microbrewery*, *brewpub*, and *microbrewery* and provides standards addressing production limits, allocation of sales, location, live entertainment, and hours of operation.

Henderson (Nevada), City of. 2013. *Development Code*. Chapter 19.5, Use Regulations; Section 19.5.5, Commercial Uses; Part H, Brew Pub/Microbrewery/Craft Distillery.

- Defines *brew pub/microbrewery/craft distillery* and provides standards addressing location, outdoor seating, environmental performance, and live entertainment.

Memphis-Shelby (Tennessee), City and County of. 2013. *Unified Development Code*. Article 2, Districts and Uses; Section 2.5, Permitted Use Table. Also, Section 2.6.3, Commercial Use Standards; Part G, Restaurant with Sale of Alcoholic Beverages, Brew Pub. Also, Section 2.6.4, Industrial Use Standards; part F, Microbreweries and Microdistilleries. Also, Article 12, Definitions; Section 12.3.1, General Definitions.

- Defines *brewpub*, *microbrewery*, and *microdistillery* and provides standards addressing location, space allocation, and alcoholic beverage sales licenses.

Novi (Michigan), City of. 2013. *Code of Ordinances*. Appendix A, Zoning Ordinance. Article 2, Construction of Language and Definitions; Zoning Districts and Map; Section 201, Definitions. Also, Article 15, B-3 General Business Districts; Section 1501, Principal Uses Permitted; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 16, TC and TC-1 Town

Center Districts; Section 1602: Principal Uses Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 17, RC Regional Center District; Section 1702, Principal Uses Permitted Subject to Special Conditions; part 10, Microbreweries. Part 11, Brewpubs. Also, Article 25, General Provisions; Section 2505, Off-Street Parking Requirements; part 14, Schedule.

- Defines *brewpub* and *microbrewery* and provides standards addressing storage, production limits, space allocation, environmental performance, outdoor seating, and parking.

Rapid City (South Dakota), City of. 2014. *Code of Ordinances*. Title 17, Zoning; Chapter 17.18, General Commercial District; Section 17.18.030, Conditional Uses; part 31, Microbreweries. Part 32, Farm Wineries. Also, Chapter 17.22, Light Industrial District; Section 17.22.030, Conditional Uses; part N, Microbreweries. Part O, Farm Wineries.

- Defines *farm winery* and *microbrewery* and provides standards addressing production limits, alcoholic beverage sales licenses, and on-site sales.

St. Petersburg (Florida), City of. 2013. *Code of Ordinances*. Chapter 16, Land Development Regulations; Section 16.10.010, Establishment of Zoning Districts, Matrices and Maps; Microbrewery. Restaurant and Bar, Brewpub. Also, Section 16.50.045, Brewery, Microbrewery, and Brewpub.

- Defines *brewpub* and *microbrewery* and provides standards addressing allocation of sales, space allocation, site design, loading, outdoor storage, and sales for off-site consumption.

Tacoma (Washington), City of. 2014. *Municipal Code*. Title 13, Land Use Regulatory Code; Chapter 13.06, Zoning; Section 13.06.200, Commercial Districts; part C.4, Land Use Requirements – District Use Table. Also, Section 13.06.300, Mixed Use Center Districts; part C.4, Land Use Requirements – District Use Table. Also, Section 13.06.700, Definitions and Illustrations.

- Defines *brewpub*, *craft production* (which includes microdistilleries), and *microbrewery/winery* and provides standards addressing production limits, space allocation, and outdoor storage.

Background

- Morley, David. 2014. "Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries." *Zoning Practice*, March.

ZONING PRACTICE

MARCH 2014



AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 3

PRACTICE MICROBREWERIES



3

Zoning for Small-Scale Alcohol Production: Making Space for Brewpubs, Microbreweries, Microwineries, and Microdistilleries

By David M. Morley, AICP

In communities across the country, beer titans like St. Louis-based Anheuser-Busch and Chicago-based MillerCoors are facing stiff competition from a host of locally owned and operated craft breweries.



➡ The number of brewers is higher today than at any point during the 20th century.

Brewers Association, Boulder, Colorado

Meanwhile, there is parallel growth in craft distilleries and small-volume wineries. While renewed interest in small-scale alcohol production is just one facet of the buy-local movement, it has special relevance for planning and zoning practitioners.

Historically, few communities have used zoning to draw distinctions between alcohol production facilities of different types and sizes. More recently, though, numerous localities have added provisions to their zoning codes that acknowledge the variety of alcohol producers. The primary motivation for these regulatory changes is a desire to make space for smaller producers to operate outside of industrial districts.

The two most common small-scale alcohol production uses to receive special zoning attention are brewpubs (restaurants combined with breweries) and microbreweries (small-volume brewers with or without on-site sales). But references to microdistilleries (small-volume distilleries with or without on-site sales) and

microwineries (small-volume wineries without on-site vineyards) are also on the rise.

The purposes of this article are to highlight why the growth in small-scale alcohol production may merit zoning changes and to summarize how communities have amended their codes to add definitions, use permissions, and, in some cases, additional standards to sanction brewpubs and microproducers.

THE BOOM IN SMALL-SCALE ALCOHOL PRODUCTION

According to the Brewers Association, the trade group for small brewers, as of June 2013 there were 1,165 brewpubs and 1,221 microbreweries in the United States. By way of comparison, in the late 1970s there were only 89 commercial brewers of any type (Brewers Association 2013). This boom in small-scale production has spread to spirits and wine too. In April 2012 *Time* reported a 400 percent surge in microdistilleries in the U.S. between 2005 and 2012 (Steinmetz 2012). And according to statistics maintained by trade

publisher *Wines & Vines*, the number of wineries producing between 1,000 and 5,000 cases per year grew 16.5 percent between August 2011 and January 2014 alone.

These trends have significant economic development implications for localities across the country. In addition to satisfying demand for locally produced beer, wine, and spirits, microproducers often distribute their product regionally or nationally, bringing new money into their host communities. Furthermore, successful brewpubs and microproducers can help enliven commercial and mixed use districts that would otherwise clear out after conventional retail and office hours. It's no surprise, then, that some communities are actively trying to lure high-profile microbreweries from other states (McConnell 2012).

THE TROUBLE WITH REGULATORY SILENCE

Despite the explosive growth in brewpubs and microproducers, surprisingly few communities explicitly sanction small-scale alcohol pro-

ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of March to participate in our “Ask the Author” forum, an interactive feature of Zoning Practice. David Morley, AICP, will be available to answer questions about this article. Go to the Zoning Practice section of the APA website at www.planning.org/zoningpractice and follow the links to the Ask the Author discussion board. From there, just submit your questions about the article to the active forum. After each forum closes at the end of the month, the archived questions and answers will be available through the Ask the Author discussion board.

About the Author

David Morley, AICP, is a senior research associate with the American Planning Association, as well as APA’s Planning Advisory Service (PAS) coordinator and coeditor of Zoning Practice. Since 2007 he has contributed to APA research projects on topics including brownfields redevelopment, complete streets, urban agriculture, shrinking cities, solar energy, and disaster recovery. Apart from his contributions to research projects and APA publications, Morley provides customized research on a daily basis for PAS subscribers.

duction facilities through their zoning codes. Without clear definitions and use permissions, planning staff or public officials are forced to make ad hoc use interpretations that can delay or even prevent otherwise desirable development. This regulatory silence creates uncertainty for business owners looking to make location decisions and secure financing, and it may have the effect of scaring away potential applicants. Finally, explicit definitions, use permissions, and use-specific standards allow communities to proactively address the potential negative effects of brewpubs and microproducers on surrounding areas, thereby minimizing future conflicts with neighbors.

DEFINING USES

Clear zoning standards for small-scale alcohol production facilities begin with clear use definitions.

Generally speaking, there are two basic schools of thought about defining uses in zoning codes. Some communities try to define every conceivable potential use, while others rely on use groups (or categories) with similar operational requirements and attendant community effects.

The first method can bring clarity and avoid some legal disputes over specific uses, but it may create unnecessarily complex regulations. The second method is part of larger trend away from proscriptive use regulations, as many communities focus more on a prescriptive approach to the form of development. In practice, most conventional new zoning codes use a hybrid of these approaches, with broad use categories, such as household living or general retail, and specific use definitions for a small subset of higher-impact or more contentious uses under each category.

Mirroring this broader conversation about the best approach to classifying and defining uses, communities that have added specific definitions for small-scale alcohol production facilities to their zoning codes generally take one of two approaches. Either they define brewpubs, microbreweries, microdistilleries, and microwineries as distinct uses, or they define an umbrella term that encompasses multiple types of production facilities.

Communities that define microbreweries, microdistilleries, or microwineries as distinct uses often rely on a production volume threshold to distinguish between the “micro” and “conventional” version of a particular use. For microbreweries, 15,000 barrels per year is a common threshold, which corresponds to the American Brewers Association’s defined limit for a microbrewery. Given that there are no corresponding industry definitions for microdistillery and microwinery, it is perhaps unsurprising that thresholds for these uses seem to vary more from place to place.

When communities define brewpubs as a distinct use, the intent is usually to distinguish between accessory- and primary-use brewing facilities. Most communities stipulate that beer production in a brewpub must be accessory to a bar or restaurant, and many cap the volume of beer produced annually (usually less than 15,000 barrels). Furthermore, some jurisdictions quantify this subordinate relationship by limiting the percentage of floor area or sales attributable to the brewery component of the business.

Definitions for brewpubs, microbreweries, microdistilleries, and microwineries often include an acknowledgment that the alcohol produced will be consumed both on- and off-site. For “micro” facilities, the presumption is typically that on-site consumption will be



Steve Morgan/Creative Commons 3.0

➔ Since 2008 the federally landmarked G.G. Gerber building in Portland, Oregon’s Pearl District has housed a brewpub.

Examples of Use Definitions

Brewpub:

- A retail establishment that manufactures not more than 9,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A restaurant-brewery that sells 25 percent or more of its beer on-site. The beer is brewed primarily for sale in the restaurant and bar. The beer is often dispensed directly from the brewery's storage tanks. Where allowed by law, brewpubs often sell beer "to go" or distribute to off-site accounts. (Brewers Association)

A restaurant with facilities for the brewing of beer for on-site consumption and retail sale at the restaurant. A brewpub must derive at least 40 percent of its gross revenue from the sale of food. (Goodyear, Arizona)

- A restaurant featuring beer that is brewed on-site. (Memphis-Shelby County, Tennessee)
- A restaurant that brews beer as an accessory use, either for consumption on-site or in hand-capped, sealed containers in quantities up to one-half barrel sold directly to the consumer. Production capacity is limited to 5,000 barrels of beverage (all beverages combined) per year. The area used for brewing, bottling, and kegging shall not exceed 30 percent of the total floor area of the commercial space. A barrel is equivalent to 31 gallons. (Plainfield, Illinois)

Microbrewery:

- A small facility for the brewing of beer that produces less than 15,000 barrels per year. It may often include a tasting room and retail space to sell the beer to patrons on the site. (Asheville, North Carolina)
- Any establishment where malt liquors are manufactured and packaged on- or off-premises, manufacturing more than 9,000 but less than 60,000 barrels of malt liquor on its licensed premises each calendar year. (Aurora, Colorado)
- A brewery that produces less than 15,000 barrels of beer per year with 75 percent or more of its beer sold off-site. Microbreweries sell to the public by one or more of the following methods: the traditional three-tier system (brewer to wholesaler to retailer to consumer); the two-tier system (brewer acting as wholesaler to retailer to consumer); and, directly to the consumer through carryouts or on-site taproom or restaurant sales. (Brewers Association)
- A brewery (for malt beverages) that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels. (Missoula, Montana)
- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 5,000 barrels per month, with a barrel containing 31 U.S. liquid gallons. (Nashville-Davidson, Tennessee)

Nanobrewery:

- The production of beer, regardless of the percentage of alcohol by volume, in quantities not to exceed 1,250 barrels per month. (Nashville-Davidson, Tennessee)

Microdistillery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves alcoholic spirits or food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 15,000 gallons per year of spirituous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A facility that produces alcoholic beverages in quantities not to exceed 35,000 gallons per year and includes an accessory tasting room. A tasting room allows customers to taste samples of products manufactured on-site and purchase related sales items. Sales of alcohols manufactured outside the facility are prohibited. (Evanston, Illinois)

(continued on page 5)

subordinate to off-site consumption. For brewpubs, the opposite is true.

Communities that define an umbrella term for multiple "micro" facilities tend to stress spatial or operational features over production volume limits. In some instances this means a square footage limit on facility size or the proportion of a facility that can be used for alcohol production. In other instances, there are no defined size limits, and the use definition simply describes a set of operational characteristics (e.g., alcohol production and sales for on- and off-site consumption).

USE PERMISSIONS

Defining and regulating small-scale alcohol production facilities allows communities to permit small breweries, distilleries, and wineries in locations that would be inappropriate for conventional, large-scale facilities. Typically, this translates to permitting brewpubs, microbreweries, microdistilleries, and microwineries in one or more commercial or mixed use districts, either by right, with ministerial approval, or subject to a discretionary use permit.

Permitting a use by right sends a clear signal to potential developers and business owners that the use is desirable in a certain zoning district. This approach presents applicants with the fewest hoops to jump through before obtaining zoning approval, but it is important to note that most small-scale production facilities will still be subject to state or local licensing or permitting laws that govern the production or sale of alcoholic beverages.

Requiring a ministerial approval for a use communicates that the community is generally supportive of the use in a certain zoning district, but this support is conditional upon compliance with objective standards intended to minimize negative impacts on proximate uses. This approach gives planning staff an opportunity to review an application before the planning director or zoning administrator issues an "over-the-counter" permit. Often, communities use ministerial approval processes to confirm that a particular application conforms to use-specific standards (see additional standards discussion below).

Permitting a use subject to a discretionary use permit (often referred to as a conditional, special, or special exception use permit) indicates that the community is potentially supportive of the use in a certain zoning district, provided the specific spatial and operational characteristics of the use do not pose compatibility problems. Discretion-

ary approval processes involve one or more public hearings before the local legislative body, planning commission, or zoning board renders a final decision on an application. Because the longer approval time frame and a greater degree of uncertainty can discourage some applicants, it is important for communities to reserve discretionary use permissions for locations or circumstances where objective standards are likely to be insufficient to ensure compatibility.

Since a brewpub typically has more in common with a restaurant than a factory, many communities permit brewpubs either by right or with ministerial approval in a wide range of commercial and mixed use districts. Meanwhile, use permissions for microbreweries, microdistilleries, and microwineries vary considerably from place to place. With that said, though, many cities do permit microproduction facilities either by right or with ministerial approval in at least one commercial or mixed use district. Furthermore, it is relatively common to permit microbreweries, microdistilleries, or microwineries by right in more intense commercial or mixed use districts and subject to a discretionary use permit in less intense districts. (See the table on page 6.)

ADDITIONAL STANDARDS

Many contemporary zoning codes limit use permissions with use-specific development or operational standards. By codifying additional standards for specific uses, the community can permit a wider range of uses without relying on discretionary use permits to ensure compatibility. In some cases, use-specific standards apply only in certain zoning districts, while in other cases the standards apply community-wide.

So far, relatively few communities have adopted additional development or operational standards for small-scale alcohol production facilities. Among those that have, the most common provisions relate to outdoor storage, the size of the facility or volume of production, loading and unloading, and proximity either to sensitive uses or to other similar producers.

Outdoor Storage

Perhaps the most prevalent type of additional standards for brewpubs and microproducers are screening requirements or limitations on the amount of space business owners can use to store equipment, production waste, or product. In some cases these standards take

Use Definitions *(continued from page 4)*

- Any place or premises wherein any wines or liquors are manufactured for sale, not to exceed 5,000 gallons per year, generally referred to as a craft, boutique, or artisan distillery. Microdistilleries may or may not include an on-site tasting room, and may or may not operate in conjunction with an on-site restaurant or bar. For operation of an on-site tasting room or in conjunction with an on-site restaurant or bar additional permitting may be required. All relevant federal, state, and local regulations apply, including but not limited to TCA Title 57 and Memphis Code of Ordinances Title 7. For on-site sales by manufacturer compliance with TCA 57-3-204 applies. (Memphis-Shelby County, Tennessee)

Microwinery:

- A combination retail, wholesale, and small-scale artisan manufacturing business that produces and serves wine and food on the premises. (Port Townsend, Washington)
- A facility that produces no more than 100,000 gallons per year of vinous beverages on-site and shall include a tasting room in which guests/customers may sample the product. (Fort Collins, Colorado)
- A small wine producer that does not have its own vineyard, and instead sources its grape production from outside suppliers. Microwineries produce wine for sale on- or off-site. For the purposes of this chapter, a microwinery is limited to a production of no more than 2,000 barrels per year. On-site consumption is not allowed, other than sample tasting by customers shopping on-site. (Glenville, New York)

Microbrewery/microdistillery/microwinery:

- A facility with no more than 3,000 square feet of floor area, for the production and packaging of alcoholic beverages for distribution, retail, or wholesale, on- or off-premises and which meets all alcohol beverage control laws and regulations. (Newport News, Virginia)
- An establishment for the manufacture, blending, fermentation, processing, and packaging of alcoholic beverages with a floor area of 10,000 square feet or less that takes place wholly inside a building. A facility that only provides tasting or retail sale of alcoholic beverages is not a microbrewery, microdistillery, or winery use. (Dallas)
- A facility in which beer, wine, or other alcoholic beverages are brewed, fermented, or distilled for distribution and consumption, and which possesses the appropriate license from the State of Maryland. Tasting rooms for the consumption of on-site produced beer, wine, or distilled products are permitted on the premises. (Denton, Maryland)
- An establishment with a primary use as a table service restaurant where beer, liquor, wine, or other alcoholic beverage is manufactured on the premises in a limited quantity subordinate to the primary table service restaurant use. The gross floor area utilized in a microbrewery, microdistillery, or microwinery for the production of beer, liquor, wine, or other alcoholic beverage shall be no greater than the gross floor area utilized for the associated table service restaurant. A microbrewery, microdistillery, or microwinery may include some off-site distribution of its alcoholic beverages consistent with state law. A tasting room or taproom may exist in a microbrewery, microdistillery, or microwinery where patrons may sample the manufacturer's products. (Wooster, Ohio)

the form of an outright prohibition on outdoor storage.

To illustrate, Covington, Kentucky, flatly prohibits all outdoor equipment and storage for brewpubs and microbreweries (§§6.28.02–03). Meanwhile, Dallas permits microbreweries and microdistilleries to store spent grain outside in silos or containers, provided the storage is screened from view (C51A-4.210(b)(4)(E)(ii)(cc)). And Novi, Michigan, prohibits

all outdoor storage for brewpubs and microbreweries, with the exception of storage in tractor trailers for a period less than 24 hours (§§1501.11.b and 1501.12.b).

The two basic rationales for storage restrictions are aesthetics and public health. Outdoor storage can be an uninviting eyesore, especially in pedestrian-oriented areas. And left unattended, production waste may produce foul odors and attract vermin.

EXAMPLES OF DEFINED USES AND PERMISSIONS

Community	State	2010 Population	Density (pop./square mile)	Defined Uses	Permitted in One or More Mixed Use or Commercial Districts		
					By Right or Ministerial Approval	Subject to Discretionary Use Permit	Subject to Additional Standards
Asheville	NC	83,393	1,856	microbrewery	X	X	§7-16-1(c)(43)
Bismarck	ND	61,272	1,986	brewpub microbrewery	X	X	§14-03-08.4.u
Bloomington	IN	80,405	3,472	brewpub	X		§20.05.089
Burlington	VT	42,417	4,116	microbrewery	X	X	
Columbia	SC	129,272	978	microbrewery	X		§17-290
Covington	KY	40,640	3,079	brewpub microbrewery microdistillery	X	X	§6.28 §6.28 §6.28
Dallas	TX	1,197,816	3,518	microbrewery/ microdistillery/ winery		X	§51A-4.210(b)(4)
Denton	MD	4,418	837	microbrewery/ microwinery/ microdistillery		X	
Fort Collins	CO	143,986	2,653	microbrewery microdistillery microwinery	X X X	X X X	
Glenville	NY	29,480	580	microbrewery microwinery	X X		
Goodyear	AZ	65,275	341	brewpub microbrewery	X X		§4-2-15 §4-2-16
Memphis-Shelby	TN	646,889	2,053	brew pub microbrewery microdistillery	X X X	X X X	§2.6.3.G §2.6.4.F §2.6.4.F
Missoula	MT	66,788	2,428	microbrewery		X	
Modesto	CA	201,165	5,457	microbrewery	X	X	§10-3.203
Newport News	VA	180,719	2,630	microbrewery/ microdistillery/ microwinery	X		
Novi	MI	55,224	1,825	brewpub microbrewery	X X	X X	§1501.11 §1501.12
Port Townsend	WA	9,113	1,306	microbrewery microdistillery microwinery	X X X	X	
St. Petersburg	FL	244,769	3,964	brewpub microbrewery	X X	X X	§16.50.045 §16.50.045
Wooster	OH	26,119	1,601	microbrewery/ microdistillery/ microwinery	X		

Facility Size or Volume of Production

Some communities use additional standards to restrict the size of the facility, scale of production, or the relationship between the alcohol production facility and collocated food or beverage service. This is most common in codes where the use definition does not stipulate a specific production limit or the nature of the relationship between primary and accessory uses. However, communities can also use this type of operational standard to modify defined limits or relationships in lower-intensity zoning districts.

For example, Asheville, North Carolina, limits microbreweries to 4,000 square feet of floor area in two specific office districts (§17-16-1(c)(43)a.3). Columbia, South Carolina, limits microbrewery production to 1,000 barrels per year in three lower-intensity commercial and mixed use districts (§17-290(2)). And Novi, Michigan, stipulates that no more than 50 percent of the gross floor space in a brewpub shall be used for brewing (§1501.11.e).

Loading and Unloading

A few communities have adopted additional standards stipulating the provision or location of loading spaces or prohibiting deliveries during certain hours. Both of these types of delivery restrictions can help brewpubs and microproducers be better neighbors by minimizing traffic congestion or limiting noise during certain times of the day. Still, it's important to note that in some pedestrian-oriented districts it may be infeasible or undesirable to require dedicated loading spaces due to premiums on space or urban design goals.

As one example, Asheville, North Carolina, stipulates that all microbreweries must have an off-street or alley-accessible loading dock (§17-16-1(c)(43)a.4). Meanwhile, St. Petersburg, Florida, discourages microbrewery access and loading from streets and requires any street-facing loading bays to keep their doors closed at all times, except when actively in use. The city also restricts service truck loading and unloading to the hours between 8 a.m. and 8 p.m., Monday through Saturday, and between 11 a.m. and 7 p.m. on Sundays and national holidays (§§16.50.045.4-6).

Distancing Requirements

A small number of communities have adopted distancing requirements that either limit the proximity of small-scale alcohol production facilities to sensitive uses, such as schools or

churches, or require a minimum separation between similar uses. For the first type of distancing requirement, the rationale is to limit potential spillover effects on properties where children congregate. The rationale for the second type of requirement is to prevent an over-concentration of brewpubs or microproducers in a specific district.

To illustrate, Novi, Michigan, requires microbreweries to be separated from one another by at least 2,500 feet (§1501.12.h). And Bismarck, North Dakota, requires property owner consent as a condition of approval for microbreweries located within 300 feet of a lot line for any school, church, library, or hospital (§14-03-08.4.u.1).

CONCLUSIONS

When localities choose to define and regulate small-scale alcohol production facilities as one or more distinct uses, it allows them to permit these uses in locations that would be inappropriate for major industrial operations. By doing so, communities can set the stage to capitalize on the economic and placemaking benefits of brewpubs and microproducers.

With that said, the preceding discussion only hints at the variety of approaches localities have taken to regulate brewpubs, microbreweries, microdistilleries, and microwineries. Furthermore, a number of communities with thriving craft brewing and distilling scenes, such as Chicago and Portland, Oregon, have yet to single out small-scale alcohol production facilities for special zoning treatment. Others have made a conscious decision to minimize use-based restrictions in favor

of prescriptive standards for the form of development. However, communities that don't thoughtfully consider regulatory alternatives for brewpubs and microproducers run the risk of being caught "flat-footed" by an application for a new facility that may be beneficial to the community but is inconsistent with current zoning.

Finally, as with any significant potential zoning change, it can be helpful to talk to other communities that have taken a similar approach to see what's working and what might need further attention. And, of course it's always important to review both new provisions and the intent behind those provisions with residents, business owners, and other community stakeholders before recommending or taking action.

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HOW DOES YOUR ZONING TREAT BREW PUBS, MICROBREWERIES, MICRODISTILLERIES, AND MICROWINERIES?

3



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Planning and Development Department

BOT Meeting Date: 7/5/2016

Item Type: Discussion

Sponsor's Name:	Eric Zamft, Director of Planning & Economic Development
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Description	Yes	No	Description	Yes	No
Fiscal Impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Public Hearing Required	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
			Many		
	Yes	No			
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Planning & Zoning		

<p>Agenda Heading Title <i>(Will appear as indicated below on Agenda)</i></p>
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Bi-Annual Grants Update and 2016 Consolidated Funding Application (CFA) Recommendations

<p>Summary</p>

The Village Grants Team (Department of Planning & Economic Development and Village Engineer), along with contracted grants consulting firm Millennium Strategies, has applied for a total of \$23.7 million in grant funds through a number of sources in the past several months. Grant sources include the Environmental Facilities Corporation, Mid-Hudson REDC, and National Fish and Wildlife Fund. See attached memorandum for a complete list of grant funding sources, amounts applied for, and anticipated response dates.

The Village Grants Team has also reviewed the available New York State Consolidated Funding Application (CFA) grant opportunities for funding sources that can help move

the Village in a positive direction. In particular, grant applications will focus on funding the following three initiatives:

- Development of a Form-Based Code
- Improvements to the Waterfront, Parks, and Trailways
- Infrastructural improvements, including the reconstruction of the Bulkhead

The Grants Team will be working with Millennium Strategies and additional Village staff to submit these applications by the July 29, 2016 deadline. See attached memorandum for a complete list of grants targeted for applications and the associated projects for each funding source.

Next Steps

The next steps are as follows:

- The Grants Team will provide an update and will require support resolutions from the Board at a future date
- The Grants Team will work with Millennium Strategies and additional Village staff to submit these applications by the July 29, 2016 deadline

Attachments
<ul style="list-style-type: none">• Bi-Annual Grants Update Memorandum• 2016 Consolidated Funding Application (CFA) Recommendations Memorandum



VILLAGE OF PORT CHESTER
DEPARTMENT OF PLANNING & ECONOMIC
DEVELOPMENT

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Eric Zamft, AICP, Director
Andrea Sherman, Planner
Constance Phillips, Planning Commission Secretary

To: Village Manager
From: Village Grants Team
Date: June 29, 2016
Re: Bi-Annual Grants Update

The Village of Port Chester, aided by contracted grants consulting firm Millennium Strategies, has applied for grant funding through a number of sources. Obtaining grant awards in either full or partial amounts requested through these programs would provide financial assistance to achieve long-term goals identified as priority projects by the Village Manager and the Board of Trustees. What follows is a listing of active grant projects, grants recently submitted, and upcoming identified grant opportunities.

ACTIVE GRANTS

Funding Program	Project	Amount	Status
NYSDOS – LWRP	LWRP document updates	\$32,500	NYSDOS reviewing Port Chester's submission
NYSDOS – Bulkhead	Bulkhead engineering and design plans	\$225,420	Boswell preparing final engineering plan
CFA - 150th Anniversary	150 th Anniversary marketing	Awarded \$10,000	Signed Incentive Proposal sent to ESD (Committee being established)
Westchester County CDBG	Public Infrastructure - Sanitary Sewers	\$750,000	Environmental Review in progress
Westchester County CDBG	Public Facilities - Senior Center	\$106,745	Environmental Review completed, awaiting OCR approval to request funds

GRANTS RECENTLY SUBMITTED

Funding Program	Project	Amount	Anticipated Response
EFC - Clean Water Grant	Sewer repairs	\$3.5 million	Fall 2016
NFWF - Long Island Sound Futures Fund	Drainage Manual development, Green Infrastructure design	\$47,000	Fall 2016
USDA Farmer's Market	Establish Farmer's Market	\$62,630	Fall 2016
Mid-Hudson REDC – Downtown Revitalization Initiative (DRI)	1) Old Village, New Downtown 2) Sound Shore Gateway	\$10 million (each)	June 2016
Dr. Pepper – Keep America Beautiful (KAB)	Recycling bins for parks	20 bins (5 per park)	Summer 2016
FEMA Assistance to Firefighters Program	Equipment for fire trucks	\$97,000	Summer 2016

UPCOMING IDENTIFIED GRANT OPPORTUNITIES

Funding Program	Date Due
CFA*	7/29
CDBG ED	Rolling
RESTORE NY	7/13
NYSDOT Transportation Alternatives Program (TAP)	TBD

*Note: *A separate memorandum has been prepared that highlights the opportunities for State funding through the 2016 Consolidated Funding Application (CFA) process.*



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Eric Zamft, AICP, Director
Andrea Sherman, Planner
Constance Phillips, Planning Commission Secretary

To: Village Manager
From: Village Grants Team
Date: June 29, 2016
Re: 2016 Consolidated Funding Application (CFA) Recommendations

The Village Grants Team (Department of Planning & Economic Development and Village Engineer), along with contracted grants consulting firm Millennium Strategies, has reviewed the available NYS Consolidated Funding Application (CFA) grant opportunities for funding sources that can help move the Village in a positive direction.

In particular, the Grants Team notes that funding could be sought that focuses on the following three initiatives:

- Development of a Form-Based Code
- Improvements to the Waterfront, Parks, and Trailways
- Infrastructural improvements, including the reconstruction of the Bulkhead

The Grants Team will be working with Millennium Strategies and additional Village staff to submit these applications by the July 29, 2016 deadline. The Grants Team will provide an update and will require support resolutions from the Board at a future date.

NYS Urban Development Corporation—Empire State Development Grant (ESD)

1. **Overview** – This grant will provide funding for business investment, infrastructure investment and economic growth investment into projects that are intended to create or retain jobs, increase business and economic activity and reduce or eliminate unemployment and underemployment in the community. Projects that will be awarded must align with the five-year strategic plan for economic development that is set by their respective Regional Council. Applicants may apply for the budget of a single phase of completion of their project, but most clearly describe the scope of the project associated with the budget request. **Note that this is a very competitive grant that is focused on job creation and growth.**
2. **Amount**
 - \$175,000,000 Statewide
 - 80% match required (of which 10% must be a cash cost-share)
 - \$250 Application Fee
 - One percent (1%) non-reimbursable commitment fee
3. **Special Application Requirements** – None.

4. **Additional Notes**

- MWBE support – ESD’s agency-wide MWBE utilization goal is 30%. Each project will be assigned an individual contract-specific goal, which may be higher or lower than 30%

5. **Possible Project** – Funding to re-write the Zoning Code as a form-based code in order to promote future development that is appropriate, well-designed, co-mingles with the public realm, and incentivizes mixed-use transit-oriented development around the train station. The zoning re-write would include review under the State Environmental Quality Review Act (SEQRA), which would be the platform to quantify and evaluate the potential build-out of downtown and what impact that could have on important resources such as traffic, transit, parking, schools, and infrastructure. Such rezoning and build out would look to streamline the approval process for prospective developers to invest and obtain results quickly with minimum additional costs and approval risks and would allow the Village to evaluate such proposals in a holistic way and not on an ad-hoc basis.

NYS Urban Development Corporation—ESD Strategic Planning and Feasibility Studies

1. **Overview** – ESD Strategic Planning and Feasibility Studies funding will be awarded to applicants that need resources to develop 1) strategic plans for development of their community or 2) to conduct feasibility studies for site assessment and planning. All plans should be focused on stimulating development of communities and urban areas. **Note that is a smaller pot of money, but is focused on planning and feasibility studies, as opposed to job creation.**

2. **Amount**

- \$1,000,000 Statewide
- \$100,000 Maximum award
- 50% Match requirement (of which 10% must be a cash cost-share)

3. **Special Application Requirements** – None.

4. **Additional Notes**

- MWBE support – ESD’s agency-wide MWBE utilization goal is 30%. Each project will be assigned an individual contract-specific goal, which may be higher or lower than 30%

5. **Possible Project** – Form-based code; Build-Out Analysis; GEIS.

NYS Department of State (DOS)—Local Waterfront Revitalization Program (LWRP)

1. **Overview** – This grant provides funding for applicants along New York’s coasts and inland waterways for programs designed to revitalize communities and waterfronts through planning, design, and construction projects. Funding may be used for program planning, feasibility, design, or marketing of specific projects, and construction projects, to advance the preparation or implementation of strategies for community and waterfront revitalization through the following grant categories:
 - Preparing or implementing a LWRP
 - Updating an LWRP to mitigate future physical climate risks
 - Redeveloping hamlets, downtowns, and urban waterfronts

- Planning or constructing land and water-based trails
 - Preparing or implementing a lakewide or watershed revitalization plan
 - Implementing a community resilience strategy
 - Celebrating the bicentennial of the Erie Canal
2. **Amount:**
- \$19,500,000 Statewide (\$10,000,000 specific for deteriorated, neglected, low income and/or densely populated areas)
 - 50% cost share requirement
 - Reimbursement
3. **Special Application Requirements** – None.
4. **Additional Notes** – None.
5. **Possible Projects**
- *Implementing a LWRP:* Form-based code; Build-Out Analysis; GEIS.
 - *Implementing an LWRP:* Obtain funding to construct the bulkhead and associated waterfront improvement plans, currently in the design phase and funded through the 2014 CFA LWRP grant.
 - *Planning or Constructing Land and Water-based Trails:* Create trailway plan to link the downtown waterfront and bulkhead to Columbus and Edgewood Parks.

Office of Parks, Recreation & Historic Preservation (OPRHP)—Environmental Protection Fund Grants Program for Parks, Preservation and Heritage (EPF)

1. **Overview** – The program for Parks, Preservation and Heritage Grants offers funding for acquiring, planning, developing, and improving parks, historic properties, and heritage areas that are located within New York State. There are three categories:
- *Parks Program:* This grant provides funding for the acquisition, development and planning of parks and recreational facilities to preserve, rehabilitate, or restore lands, waters or structures for park, recreation, or conservation purposes. Eligible projects include: playgrounds, courts, rinks, community gardens, and facilities for swimming, boating, picnicking, hunting, fishing, camping, or other recreational activities.
 - *Historic Preservation Program:* This grant provides funding for acquisition, improvement, protection, preservation, rehabilitation, or restoration of properties listed on the State or National Register of Historic Places and for structural assessments and/or planning for such projects.
 - *Heritage Area Program:* This category is Not Applicable to the Village of Port Chester.
2. **Amount**
- \$20,000,000 Statewide (\$10,000,000 specific to inner city/underserved areas)
 - \$500,000 maximum award
 - 50% cost share requirement (75% in high-poverty districts)
 - Reimbursement

3. **Special Application Requirements – Many.**
4. **Additional Notes**
 - Must enhance the public’s access to parks and their environmental and recreational resources.
5. **Possible Project – Parks Program:** Create trailway plan to link the downtown waterfront and bulkhead to Columbus and Edgewood Parks.

Office of Community Renewal (OCR)—New York Main Street (NYMS)

1. **Overview** – This grant provides resources to invest in projects that provide economic development and housing opportunities in downtown mixed-use commercial districts. A primary goal of the program is to stimulate reinvestment and leverage additional funds to establish and sustain downtown and neighborhood revitalization efforts. Proposed activities must be based in no more than a three contiguous block area. There are four categories:
 - *Traditional NYMS Target Area Building Renovation Projects:* renovation of mixed-use or streetscape enhancements such as: planting trees, installing street furniture and trash cans, or other activities to enhance the target area.
 - *NYMS Downtown Anchor Project:* establish or expand cultural, residential or business anchors that are key to local downtown revitalization efforts through substantial interior and/or exterior building renovations. Projects must be standalone, single site, “shovel ready” renovation projects.
 - *NYMS Downtown Stabilization Program:* assist with environmental remediation and associated construction costs, as well as other innovative approaches to stabilizing and developing downtown, mixed-use buildings. Funds are available for projects including asbestos, soil vapor intrusion testing and mitigation, and building stabilization construction activities.
 - *NYMS Technical Assistance:* Grants are available to assist projects that will directly improve a community’s capacity or readiness to administer a future New York Main Street building renovation program. OCR has suggested that the Village pursue a NYMS-TA project as a lead-in to future NYMS projects.
2. **Amount**
 - \$5,000,000 Statewide
 - New York Main Street
 - Traditional NYMS Target Area Building Renovation Projects: Award range \$50,000-\$500,000
 - NYMS Downtown Anchor Project: Award range \$100,000-\$500,000
 - NYMS Downtown Stabilization Program: Award range \$50,000-\$500,000
 - NYMS Technical Assistance
 - \$20,000 maximum award amount
 - 5% cash match required
3. **Special Application Requirements – None.**
4. **Additional Notes – None.**

5. **Possible Project** – *NYMS-TA*: Develop design guidelines for downtown Port Chester to be integrated into a new form-based code. OCR has encouraged the Village to focus on the *NYMS-TA* program at this time.

The Grants Team would need additional direction from the BOT if it would like to pursue the following opportunity that is outside of the CFA program:

Office of Community Renewal (OCR)—Community Development Block Grant Program, Economic Development (CDBG ED)

1. **Overview** – The Economic Development Program provides grant funds to eligible communities for economic development projects that result in the creation or retention of permanent jobs, principally for persons from low- and moderate-income families. Eligible communities can apply for NYS CDBG funds to support a wide range of activities. The Economic Development Program consists:
 - *Economic Development*: Funding is provided to eligible communities for traditional economic development activities such as business attraction, expansion, and retention. Eligible uses of NYS CDBG Economic Development funds include, but are not limited to: acquisition of real property; financing of machinery, furniture, fixtures and equipment; building construction and renovation; working capital; inventory; and employee training expenses. Other eligible uses include construction or improvement of publicly owned infrastructure necessary to accommodate the creation, expansion or retention of a business which will result in the creation or retention of permanent, private sector job opportunities (at least 51% must be for LMI individuals at 80% of Westchester AMI). This is a rolling application and not due on July 29th.
 - *Small Business*: Funding provides resources to eligible communities in an effort to foster small business development while providing job opportunities for persons from LMI families (again, 51%). Eligible activities are the same as listed above. For the purpose of this program, a small business is defined as a commercial enterprise that is independently owned, operated, and controlled, and has twenty-five (25) or fewer full-time equivalent employees. This is a rolling application and not due on July 29th.
2. **Amount**
 - Economic Development
 - \$100,000-\$750,000 (up to 40% of project cost)
 - Small Business
 - \$25,000-\$100,000
3. **Special Application Requirements** – Involves two-step process: 1) Pre-Submission Form and 2) Formal Invitation to Apply.
4. **Additional Notes** – Projects must result in the creation or retention of at least one full-time equivalent (FTE) job for every \$15,000 of NYS CDBG funds awarded.
5. **Possible Projects**
 - *Economic Development*: Obtain funding to construct the bulkhead and associated waterfront improvement plans, currently in the design phase and funded through the 2014 CFA LWRP grant.
 - *Economic Development*: Continue to fund the on-going, Village-wide \$15 million sewer renovation project. The Village will continue to issue debt for the next several years in order to address the EPA's compliance order. Grant awards will reduce the amount of debt needed to complete this project.

The Grants Team does not suggest that the Village pursue the following CFA programs, because the Village is not eligible at this time, such programs are not applicable for the Village, due to the extent of the application, or based on priority:

1. **NYSDEC/EFC Wastewater Infrastructure Engineering Planning Grant**
2. **NYSDEC—Water Quality Improvement Project Program (WQIP)**
3. **Excelsior Jobs Program**
4. **New York State Business Incubator and Innovation Hot Spot Support Program**
5. **Canalway Grants Program**
6. **New York Power Authority—Recharge New York**
7. **NYS DOL—Workforce Development**
8. **Low Cost Financing—Federal Industrial Development Bond Cap**
9. **Environmental Facilities Corp.—Green Innovation Grant Program (GIGP 8)**
10. **NYSERDA—Flexible Technical (FlexTech) Assistance Program**
11. **NYSERDA—Commercial New Construction Program**
12. **NYSERDA—Commercial Implementation Assistance Program (CAIP)**
13. **NYSDEC—Climate Smart Communities Grant Program**
14. **NYS DOS, Division of Local Services—Local Government Efficiency (LGE) Program**
15. **NYS Council on the Arts—Arts and Culture Initiatives**
16. **Empire State Development—Market New York (ESD MNY)**
17. **Office of Community Renewal (OCR)—Community Development Block Grant Program (CDBG)**



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

PLZN - 03
BOT 7-5-2016

AGENDA MEMO

Department: Planning and Development Department

BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Sponsor's Name: Anthony (Tony) Cerreto, Village Attorney

	Yes	No	Description	Yes	No
Fiscal Impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	Business & Economic Development		
Agreement	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	N/A		

Agenda Heading Title

(Will appear on the Agenda as indicated below)

DISCUSSION ON STATEMENT REGARDING COMMUNITY BENEFITS
AGREEMENTS

Summary

Background:

We have received a statement, from our special counsel regarding community benefits agreements, which the Mayor has agreed to read aloud at this public meeting.

Proposed Action

Discuss

Attachments

Statement prepared by Chertok

Kenny, David

From: Mark Chertok <mchertok@sprlaw.com>
Sent: Monday, June 20, 2016 10:35 AM
To: Cerreto, Tony; Zamft, Eric; 'Peter Feroe'
Cc: Alexis Saba
Subject: United Hospital -- Privileged and Confidential Attorney Work Product

Proposed email for BOT members re CBA:

Thank you for your suggestions regarding a Community Benefits Agreement (CBA) for the United Hospital Redevelopment Project. Please contact the developer, Starwood Capital Group, directly with regard to a CBA. On the advice of counsel, the Village takes no position on a CBA between a community organization and the developer, and therefore will not participate in the development, negotiation, implementation, or enforcement of a CBA. However, the Village is considering in the zoning and New York State Environmental Quality Review Act (SEQRA) processes the many issues raised by the community to date during this extensive public process, and will continue to do so.

Mark A. Chertok
SIVE, PAGET & RIESEL P.C.
460 Park Avenue, 10th Floor
New York, NY 10022
Phone: (212) 421-2150
Direct: (646) 378-7228
Fax: (212) 421-1891
Cell: (917) 886-2277
mchertok@sprlaw.com

Visit our new website at www.sprlaw.com

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Please consider the environment before printing this email.



VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact	x		Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

DECLARING VILLAGE-OWNED VEHICLES SURPLUS TO VILLAGE NEEDS AND
AUTHORIZING SALE BY AUCTION

Summary

Background:

The General Foreman has identified a number of Village-owned vehicles that are beyond their usual life with high mileage and/or in need of extensive repair.

Village staff will use Absolute Auction & Realty, Pleasant Valley, New York, by “piggy-backing” on a contract the vendor has with Dutchess County to auction these vehicles.

Proposed Action

Adopt the resolution

Attachments

Memo from the General Foreman Contract and Marketing Propoisal with Absolute Auction & Realty
--

RESOLUTION

DECLARING VILLAGE-OWNED VEHICLES SURPLUS TO VILLAGE NEEDS AND
AUTHORIZING SALE BY AUCTION

On motion of TRUSTEE _____, seconded by TRUSTEE _____, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village General Foreman has identified a number of Village-owned vehicles that are beyond their useful life with high mileage and/or in need of extensive repair.

WHEREAS, Board action is required to dispose of these vehicles. Now, therefore, be it

RESOLVED, that the following Village-owned vehicles are hereby declared surplus to Village needs to be disposed of in the best interest of the Village of Port Chester.

<u>Vehicle</u>	<u>Year</u>	<u>Vehicle Identification Number (VIN)</u>
Chevrolet K-3500	1998	1GBJG31J8W1042996
Chevrolet Caprice	1995	1G1BL52P7SR170001
Chevrolet Lumina	1999	2G1WL52JY1329240
Lexus GS300	1999	JT8BBD68S8X0053172
Cadillac Catera	2000	W06VR54R5YR008566
Chevrolet Lumina	2000	2G1WL52J1y1322529
Chevrolet Lumina	2000	2G1WL52JOY1322280
Chevrolet Impala	2001	2G1WF55K119336868
Chevrolet Impala	2004	2G1WF55K149418104
Chevrolet Impala	2005	2G1WF55K059382293
Chevrolet Impala	2005	2G1WF55K45938632
Mack (recycling truck)	2001	1M2ACO7CX1M004722
Mack (sanitation truck)	1996	1M2K195C6TM007735
Elgin (sweeper)	1997	P2622S,

Approved as to Form:

Anthony M. Cerreto, Village Attorney



Village of Port Chester

MEMORANDUM

TO: Christopher D. Steers, Village Manager

FROM: Rocky Morabito, DPW-Foreman

DATE: June 29, 2016

RE: Surplus Vehicles To Be Auctioned

- 1) 1998 – CHEVROLET K-3500 (BUS) - 43306 miles - TRANSM. PROBLEM - VIN# 1GBJG31J8W1042996
- 2) 1995 – CHEVROLET CAPRICE - 153032 miles - VIN# 1G1BL52P7SR170001
- 3) 1999 - CHEVROLET LUMINA - 114490 miles VIN# 2G1WLS2J1V1329240
- 4) 1999 - LEXUS GS3 - 114490 miles. - ELECTRICAL PROBLEM - VIN# JT8BBD68S8XOOS3172
- 5) 2000 - CADILLAC CATERA - 081269 miles- VIN# W06VR54RSYR008556
- 6) 2000 - CHEVROLET LUMINA - 106630 miles - VIN# 2G1WL52J1V1322529
- 7) 2000 - CHEVROLET LUMINA - 108080 miles - VIN# 2G1WL52JOV1322280
- 8) 2001 - CHEVROLET IMPALA -120180 miles - NO BRAKES - VIN# 2G1WFSSK119336868
- 9) 2004 - CHEVROLET IMPALA - 82278 miles - VIN#.2G1WFSSK149418104
- 10) 2005 - CHEVROLET -IMPALA - 130696 miles - KNOCKING MOTOR – VIN# 2G1WFSSK059382293
- 11) 2005 - CHEVROLET IMPALA -133150 miles - VIN# 2G1WF55K45938632
- 12) 2001 - MACK {RECYCLING} - 045671 miles - VIN# 1M2AC07CX1M004722
- 13) 1996 - MACK {GARBAGE TRUCK} - BAD MOTOR - VIN# 1M2K195C6TM007735
- 14) 1997 - ELGIN (SWEEPER) - 068996 miles



Auctioneer Services

1.0 Qualifications:

A. ABSOLUTE AUCTIONS & REALTY, INC. (AAR) was founded in 1989 by Robert and Susan Doyle to handle all facets of a professional auction and appraisal business. AAR's Mission Statement is:

“To Professionally Serve Our Clients and Customers with the Acquisition and Disposition of Real and Personal Property through the Transitions of Life.”

(Note: Please see our website, www.AARauctions.com for the complete company history, list of professional affiliations, company values, staff profiles, etc.)

B. Professional Staff Members

Susan A. Doyle, President, Auctioneer
Robert A. Doyle, Secretary/Treasurer, Auctioneer
Philip Gableman, Vehicle & Personal Property Coordinator, Auctioneer
Jennifer Mensler, Office Administrator, Auctioneer
Jessica Meyer-Booth, Marketing Coordinator
Evette Jimenez, Office Assistant
John Santiago, Gallery Manager
Paul Gableman, Gallery Assistant-Manager
Taylor Robinson, Gallery Assistant
Clint McCoach, Gallery Assistant
Kimberly Doyle, Social media promoter

C. New York State municipal clients for whom Absolute Auctions & Realty, Inc. has provided service:

Arlington Central School, Lagrangeville NY: Personal Property
Chemung County, NY: Real Property
City of Beacon, NY: Real & Personal Property
City of Newburgh, NY: Real & Personal Property
City of Poughkeepsie, NY: Real & Personal Property
Clinton County, NY: Real Property
Dutchess County, NY: Real & Personal Property
Dutchess Community College, Poughkeepsie NY: Personal Property
Franklin County, NY: Real Property
Greene County, NY: Real Property
Madison County, NY: Real Property
NYS Bridge Authority: Personal Property
Orange County, NY: Personal Property
Putnam County, NY: Personal Property
Sparkill-Palisades Fire District, Sparkill NY: Personal Property
Sullivan County, NY: Real & Personal Property
Town of East Fishkill, NY: Personal Property
Town of Fallsburg, NY: Personal Property
Town of Fishkill, NY: Personal Property
Town of North Castle, NY: Personal Property

Town of Orangetown Police Department, NY: Personal Property
Town of Pleasant Valley, NY: Personal Property
Town of Poughkeepsie, NY: Personal Property
Town of Red Hook, NY: Personal Property
Town of Rhinebeck, NY: Personal Property
Town of Wappingers, NY: Personal Property
Town of Yorktown, NY: Personal Property
Ulster County, NY: Personal Property
Ulster County, NY BOCES: Personal Property
Wallkill Central Schools, Wallkill NY: Personal Property
Westchester County, NY: Personal Property

D. References:

Heidi Seelbach, Commissioner of Finance, Dutchess County, NY- 845-486-2033
Nancy Buck, Treasurer, Sullivan County, NY- 845-807-0200
Steve Connor, Fleet Manager, Westchester County, NY- 914-995-4961
Dwayne Doughty, Captain, Town of East Fishkill Police- 845-221-2111

2.00 REQUIREMENTS

- A. ABSOLUTE AUCTIONS & REALTY, INC. (AAR) is a professional auction company, licensed, bonded, certified and insured.
- B. AAR is ready, able and willing to produce and distribute a listing of the items or lots to be auctioned. AAR has a large mailing list of proven buyers. The entire listing will be made available on AAR's website and emailed to over 45,000+ qualified buyers.
- C. AAR will advertise in the Craigslist.com, AuctionZip.com and the AAR website at no charge to the seller. The entire online catalog shall be spidered out from the AAR website to many other websites attracting buyers. In addition, AAR can provide a postcard mailing service on a per request basis for specialty assets (paid for by the seller.)
- D. AAR can handle the auction/sale without additional manpower from the seller. AAR will photograph, catalog and format all data to be posted on our proprietary Dynamic Online Only platform. The auction would be search engine optimized (SEO) by item and run for a duration of time (10-14 days) at the seller's discretion. The auction would begin closing at a set time, predetermined with the seller. Each lot would close 30 seconds apart and have a dynamic ending to allow bidding as long as bidders are willing to pay more. AAR will invoice all successful bidders and include pickup instructions that are predetermined to work best for the seller.
- E. AAR can handle the auction/sale of any personal property that the seller would like to dispose of during the course of the year under the same terms of no commission or advertising costs to the seller.
- F. Seller will have the right to accept or reject bids from the auction. Results will be sent to the seller the following morning for approval, and a response from the seller will be returned to AAR by 1pm the same day to allow AAR to invoice buyers in a timely fashion. AAR understands that the seller may be required on occasion to remove a vehicle from auction in order to put back in service.

a. **Name of contact for bid approval:** _____

b. **Email Address to send report for approval:** _____

c. **Phone number for contact person:** _____

G. The seller covenant and agrees that is has good marketable title and the right to sell all items to be sold and that assets are free and clear from all liens or encumbrances unless indicated otherwise on inventory provided by the seller to AAR.

H. This is an online auction. AAR will collect funds on the seller's behalf and remit payment to the seller. The seller will handle the transfer of title, if any, at time of pick-up. The seller will supply AAR with their Federal ID# if applicable to be used on the invoices to which will be used as Bill of Sales. AAR can also collect sales tax and remit the amount collected for sales tax in a separate check to the seller. The seller will be responsible for filing NYS Sales Tax Returns. NOTE: This may not apply to some entities such as towns and villages.

a. The seller shall provide auctioneer with information pertaining to payment as to how check shall be made payable to and the mailing address to which payment and reconciliation shall be sent to.

i. **Pay to the order of:** _____

ii. **Address to where check should be sent:** _____

3.0 COMPENSATION

ABSOLUTE AUCTION & REALTY, INC. will not charge the seller any commission or advertising expenses (except for additional requested advertising by the seller). AAR will receive as their sole compensation a 10% Buyer Premium on top of the highest bid to be paid by the buyer at the time of the auction.

a. Any additional specialty advertising expense chosen by the seller and marketed by Auctioneer, such as targeted postcard mailing, shall be deducted directly from proceeds of said auction.

4.0 AGREEMENT

AAR understands and is willing to provide auctioneer services under this agreement with the seller for Auction Services.

5.0 INSURANCE REQUIREMENTS

AAR maintains Workers Compensation coverage on all employees. In addition, AAR has General Liability Insurance Coverage to comply with multiple municipality requirements.

SELLER

CONTRACTOR

Selling agency or representative

Absolute Auctions & Realty

Lights, Camera - Auction!



AARauctions.com

AUCTION MARKETING PROPOSAL FOR
MUNICIPAL SURPLUS
ASSETS

Absolute Auctions & Realty
45 South Avenue | P.O. Box 1739
Pleasant Valley NY, 12533

TABLE OF CONTENTS

ABSOLUTE AUCTION & REALTY, INC. AUCTION SERVICES

Online Auction Solution 3

Full Service Auction Marketing Company 4

MARKETING

Marketing Strategy 5

Direct Mail – Power of the Postcard 6

Enhanced Marketing Solutions (EMS)- Media Advertising 7

EMS- Additional Services 8

Marketing Budget 9

AUCTION TERMS

Recommended Terms 10

Responsibilities

Seller 11

Auctioneer 11

FEE STRUCTURE

Commission 12



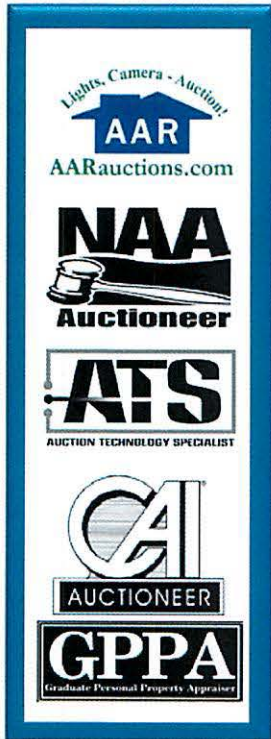
ONLINE AUCTION SOLUTIONS

Our proprietary online bidding platform through AARbids.com

- Auctions create a sense of urgency.
- All interested parties compete - driving prices upward.
- Approved Bidders have agreed to terms prior to auction start.
- Convenient to bid anytime, anywhere and on any device.
- Dynamic ending allows every last bid to be executed.
 - Proprietary software converts into real-time live auction at the end and prevents sniper bidding.
- Largest proprietary buyer database in the NY, NJ, CT and MA region.
 - Vetted and proven buyers.
- Highest possible fair market value achieved.
- Syndicated auction portals to market your assets to all potential buyers
- No Seller-paid Commission (Compensated by a 'Buyer's Premium').
- Pickup date and time approved prior to start of auction.
- Heavily Search Engine Optimized (SEO) websites.
- Professional photography and cataloging completed by AAR at no cost.
- Invoices can be structured to serve as Bill of Sale (BOS).
- Flat fee pricing across the board



FULL SERVICE AUCTION MARKETING COMPANY



- Auction Services
- Conventional Sales Methods
- Local, Regional, National and Global Marketing Campaigns
- Website Development and Implementation specific to assets
- Internet Marketing and data syndication
- Search Engine Optimization (SEO) by asset
- In-House Advertising Firm - AAR Marketing Services
- Over 65 years of Quality, Reputation and Experience in the Auction Method of Marketing*
- Proprietary bidding platform - Software and systems not available to any other party or firm in the industry.
- Proprietary surplus buyer database - Bank level verification of bidders
- Leaders in technology
- Professional photographing - High resolution, clear & crisp images.
- ATS (Auction Technology Specialist) certified
- Multiple Certified Auctioneers (CAI) & Appraisers (ISA, GPPA, CAGA) - Knowledge and Ability to reach markets for specialized assets.



MARKETING STRATEGY

With a clear understanding of the market, we have put together a plan that makes the most effective use of our powerful sales and promotional tools. We have a full-time diverse staff who are ready to put their industry leading marketing, web development, and creative talent to work for you. Our ability to promote your assets is unique and unmatched in the industry.

The target market for surplus assets is diverse. We seek out those who are interested in purchasing such items, from past and current sales, as well as seek those who do not yet know such sales exist and are looking for the opportunity to buy. Our efforts will be local, regional, national and even span international. Our marketing plan is specific to the seller. While there may be a lot of local interest, we will reach national and international audiences in search for potential buyers to leave no stone unturned. Our client specific marketing campaigns are geared to the specific buyer's who operate and purchase assets within their respective categories. These campaigns are also purposed to serve constituents of the seller to make taxpayers aware that the government agency is operating in the best interest of the body which they represent and affording everyone the equal opportunity to participate in a sale of potential interest.

Through strong key word optimization of assets, items are searchable on an individual basis versus traditional event basis. While the event itself is still a key part of advertising the sale overall, it is imperative to diversify the searchable inventory to allow the highest potential number of interested parties for your assets to find and bid on the auction item(s).

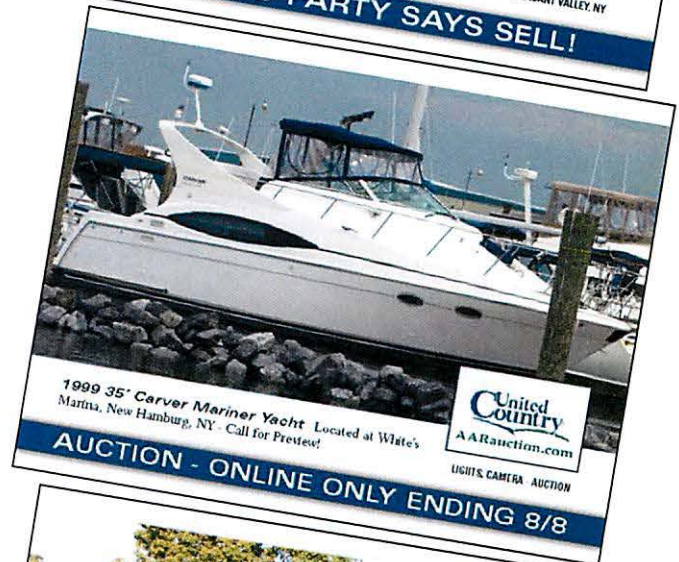
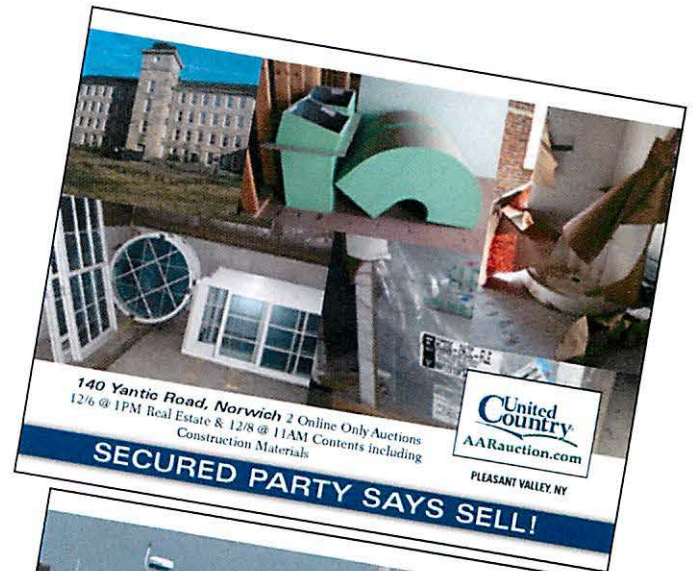
Assets are marketed in conjunction with their digital presence to build awareness of the auction and simultaneously reinforce the sale in print mediums. This builds confidence, credibility and transparency for the sale as to encourage the bidder base that the seller and contractor are professional in all of their operations.



POWER OF THE POSTCARD

Offered on a request basis:
Primarily for specialty assets.

- Targeted local mailing
- Makes an immediate impression
- More people respond to post card mailings than any other type of mailing
- Post cards are less likely to be thrown away as junk mail, nothing to open, easy to view information on the card
- Puts action into the customers hands – talking directly to them about something that matters, their neighborhood, community, asset classes, etc...
- Cost effective
- Because our in-house design team has won multiple national and state advertising awards, you can feel confident that your asset(s) will get the promotion it deserves.



EMS: MEDIA ADVERTISING

BID NOW! AARuction.com



Rob and Sue Doyle
A Team

DYNAMIC ONLINE AUCTIONS

Benefits of
Dynamic Online
Only Auctions:

Quick & Efficient
No Hassle
Cost Effective
Strong Marketing
Bidding Open 24/7
Fair Market Value



Cherry, NY Real Estate Auction
Ending 11/16 @ 8PM



Hugoburg, NY Auction
Ending 11/16 @ 8PM



Avon, CT Auction
Ending 12/1 @ 9PM



Dutchess County Surplus Vehicle & Equipment Auction Ending 12/7 @ 8PM
19 Trucks, Buses, Vans and Cars located at the Dutchess County Auto Yard, 570 Salt Point Turnpike,
Poughkeepsie, NY. Preview online 24 hours/day. Live preview available Monday Ending 12/6 @ 10PM at the auto
yard. Vehicles will be started on Saturday, December 8 from 9AM-1PM. Bid now on www.AARbids.com



11/26 Storage Unit
Storage Auction
Delaware storage units
will be sold. Check web
for locations and times

Self Storage
Westly

Sullivan County Online
Only Tax Foreclosure
Auctions Ending 12/15
Year 13 Auction.com
For details

House Improvement
Bidding Materials
Auction Ending Jan. 2011
Major Equipment Sale
Liquidate - FV 1371
DINING MESS/COFF
Tentatively

Follow us on Facebook!
"Like" our page and be
updated with everything
going on including
Auction Previews History
New Site Profile
Testimonials

Buy Green and Save Your Green By Purchasing
Quality, Recycled Items at YOUR Price

Recent Sales



From specialty collections, real estate, antiques, vehicles to the
complete contents of estates and businesses, we auction it all!
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AARuction.com

Add your email to our website to get auction notices.

Ranked #1 United Country office in the Northeast
United Country Absolute Auctions & Realty, Inc.
15 South Ave. Pleasant Valley, NY 145-65-3169
info@aaruction.com www.AARuction.com www.AARbids.com



Our media campaigns are designed to take the buying public's attention and focus it directly on your property. It is the single most important aspect of the entire process. Without the proper advertising, you will not reach the market and will not have prospective buyers to work into the system. Most of your assets will be advertised on a National, Regional and Local level to insure more than adequate market coverage. Some might command a Global campaign and others just a regional and local campaign. Either way, our award winning design team produces ads that capture the markets attention and in turn, brings buyers to the table.

SURPLUS AUCTION

Sullivan County Surplus Vehicles & Equipment
August 18 @ 7:00PM

Preview 8/16 & 8/18 (see web for locations & times)

Sullivan County Government Center,
100 North St, Monticello, NY

Partial list: Heavy equipment incl. Bomag single

dump roll

lated hat

2500's, C

recyclin

and r

Paymer

sale. C

U



SURPLUS AUCTION

Sullivan County Surplus Vehicles & Equipment Auction

Wed., May 28 @ 6PM/Registration 4:30-6PM

Previews: May 27 & 28 10AM-1PM

Sullivan Cty Govt Center, 100 North St, Monticello, NY

Partial list: Cranes, dump & flat bed trucks, buses, vans,

compact, midsize & full size autos, police cars, pickup

trucks and more! Terms: 15% buyer's premium. Payment

in full, cash/guaranteed funds day of sale.

Complete list of photos, locations & catalog:

AARauctions.com

UCAAR & HAR 800-343-0061



CAPTURING THEIR ATTENTION

Our ads are designed to grab the readers' attention with stunning visuals that make the ad stand out in a crowd. Our award winning designs combine graphics and text that grab the attention of prospective buyers and each one is custom tailored for each property.

FOCUS THEIR ATTENTION

Once we have their attention, we focus it on the highlights and intriguing aspects of the asset(s). Pictures of the Asset(s) and carefully thought out text focus their interest on finding out more. We give them as much information as possible, and are available to assist with additional questions via email or phone.

KEEP THEIR ATTENTION

We make it easy for them to find out more about the asset(s). They can call or visit our website for more details. We find that nearly half of all inquiries come via the web.



EMS: ADDITIONAL SERVICES

Google™

AuctionZip
Find Auctions Anywhere!

auctionservices.com
Powering the Auction Industry.

NAL



SEARCH ENGINE OPTIMIZATION

Search Engine Optimization (SEO) is critical to the success of internet marketing. Our SEO experts will make sure that you are receiving the highest amount of web traffic possible by being found on major search engines such as Google, Yahoo and Bing. Absolute Auctions & Realty (AAR auctions) integration with 3rd party companies like auctionservices.com, auctioneers.org, auctionzip.com, Facebook, global auctionguide.com, nationalauctionlist.com, LinkedIn, Twitter, Pinterest, Youtube, etc... gives you the additional insurance that your assets are being viewed by the internet masses.

PUBLIC RELATIONS

Our Public Relations department will create and distribute a press release to targeted publications and local, regional, and national news mediums. This is a great form of free advertising to potential buyers.

"INNER CIRCLE" MARKETING

Probably one of the most well known, yet overlooked methods of marketing. This form of Enhanced Marketing is going to the core of a specific asset class, such as a collector of a commodity or industry, and utilizing the opportunities within that circle to advertise assets. The most common form of this is online forums, where all members belong for one common purpose or another. This is especially important for specialty collections or commercial assets where you can target members of one commodity in a very dense population at one time. A model train auction being advertised in a train forum, a knife collection in a knife forum, or equipment in yellow iron magazine would be perfect examples this form of advertising.



Lights, Camera - Auction!
AAR
AARauctions.com

MARKETING BUDGET

Location	Day	Ad Type	Cost
Internet Web Pages			
www.AARauctions.com	DOA	I	N/C
AARBids.com	DOA	I	N/C
Auctionzip.com	DOA	I	N/C
Nationalauctionlist.com	DOA	I	N/C
Auctionservices.com	DOA	I	N/C
Nyauctioneers.org	DOA	I	
Auctioneers.org	DOA	I	N/C
Postcard Mailing (500 radius) At Municipality's Discretion	Set Launch Date	P	\$300.00 Paid for by seller if chosen
Local/ Regional Paper in relation to Municipality's location	DOA	P	N/C
Internet (Craigslist.com, Pinterest.com, AARauctions.com, AARBids.com)	DOA	I	N/C
Facebook (Posts are boosted to target demographic specific buyers)			N/C
Search Engine Optimization (SEO) per asset (Keyword focused to maintain google priority)	DOA	I	N/C
Specialty groups privately targeted (LinkedIn, forums, associations, industries, demographics)	DOA	I	N/C
Photos & Vehicle identification	DOA	I & P	N/C
Email Blasts (Targeted email blasts to 45,000 approved emails)	3x	I	N/C
TOTAL PRINT & INTERNET ADVERTISING			\$0.00

***N/C: NO COST**

***DOA: Duration Of Auction**



RECOMMENDED TERMS

TERMS FOR AUCTION OF VEHICLES

Note: This is a cataloged sale and lots will be sold in catalog order.

1. Purchases are cash, Visa/MC/Discover, guaranteed funds, or cashier's check. Bidder agrees that if paying by credit card that they shall not attempt a charge-back for any reason whatsoever. Bidder agrees that vehicles and equipment are to be paid with guaranteed funds only such as cash, cashier's check, money order or wire transfer.

Payment: Immediately following the payment deadline, the credit card associated with your account will be automatically charged for the full price of your purchases. For this reason, it is imperative that you provide the Auctioneer with a credit card that can bear the weight of all of your purchases. Failure to do so will result in account suspension. You can update your credit card information at any time by clicking the "My Account" tab and choosing "Update Credit Card."

Chargebacks Prohibited: You agree that you will accept all charges placed on the credit card associated with your account, and you agree that you will not chargeback any amount that the Auctioneer charges to your credit card. You agree that this provision applies equally to amounts charged in connection with any items you have won.

2. All lots are sold subject to New York State Sales Tax unless bidder has filled out a NEW YORK STATE SALES TAX EXEMPTION CERTIFICATE and has such certificate on file with the Auctioneer.

3. If the Auctioneer determines that any bid is not commensurate with the value of the article offered, he may reject the same and withdraw the item from the auction. If, having acknowledged an opening bid, he decides that an advance is not sufficient, he may reject the advance. The Auctioneer reserves the right to bid on behalf of Buyers/Seller/Secured parties.

4. Ownership title passes upon the fall of the Auctioneer's gavel, and thereafter the property is at the risk of the buyer, and neither the seller nor the auctioneer shall be responsible for loss or damage.

5. Every item is sold "as-is, with all faults." Neither the Auctioneer nor the Seller makes any warranties or representations of any kind or nature with respect to said property. All sales are final. Catalog descriptions are for simple identification purposes only; no representations are made as to authenticity, age, origin or value. The Buyer relies solely on his/her own inspection and judgment when bidding.

6. All purchases shall be **paid in full** by date specified in the shipping and payment terms located in each lot. Any items not removed by that date shall be deemed abandoned by bidder and shall be disposed of at bidder's expense without recourse. Failure to make payment by payment deadline will result in forfeiture of items in the auction and may result in revocation of bidding privileges with the bidders account.

7. Purchasers are responsible for all costs involved with removal of their purchases and any and all damages incurred during removal of purchases.

8. **10% BUYER'S PREMIUM** shall be added to the top bid to become part of the purchase price. **BUYER'S PREMIUM DEFINITION:**The Buyer's Premium is that portion of the commission(s) which is being paid by the buyer. It is clearly understood and agreed by both the buyer and the Seller that the Auctioneer and Broker represent the Seller only.

9. If you, the bidder, are not at pickup before the last person has finished picking up their purchase(s), your items will be considered abandoned. Pickup time(s) are sharp, unless otherwise mentioned, no exceptions.

10. The highest approved bidder is determined to be the buyer. In all cases of disputed bids, the property shall be resold, but the Auctioneer will use his judgment as to the good faith of all claims, and his decision is final.

11. All bidders are required to register and give full identification prior to the beginning of the auction and are required to use the number issued them when identifying themselves as the successful bidder.

12. Should a dispute arise after the auction, the Auctioneer's records shall be conclusive in all respects.

13. This is a privately owned and operated auction. We reserve the right to refuse admittance to any person(s). No transfer shall be recognized from one buyer to another.

14. Bidder agrees to pay any and all charges and expenses incurred by reason of any breach of Terms & Conditions of auction, or in case of default, including, without limitation, reasonable attorney's fees, as well as any dollar deficiencies which may result in the resale of the property and the cost of re-marketing said property. Additional commissions shall be due and payable.

15. Auctioneer reserves the right to withdraw any property prior to auction.

16. Bidder agrees to the above Terms and Conditions of the auction prior to receiving a bid card for this auction, and all other auctions said bidder attends of **ABSOLUTE AUCTION & REALTY, INC.** in the future.

17. The above-stated Terms & Conditions of Auction cannot be altered except in writing by all parties of the contract, or by verbal changes to terms give by the Auctioneer at time of auction.

18. Bidder does hereby indemnify and hold harmless the Auctioneer and Seller from any and all damages, claims, or liabilities from injuries to persons or property of any type whatsoever, caused before, during, or after the auction.

19. In event that description differs from photos, description takes precedence over photos.

20. Buyers are responsible to make sure they receive everything at point of pickup.

21. Bidder gives permission for Auctioneer and those acting pursuant to its authority to photograph, video tape, or use any other electronic method of recording my likeness and/or voice to be used at the Auctioneer's discretion in auction-related publications and/or websites.



RESPONSIBILITIES

Seller:

- Provide accurate list of assets to be sold in surplus auction (Excel format templates can be provided if preferred for municipality)
 - Vin number
 - Year, make, model
 - Any known additional information
- Transfer keys and title to purchaser at time of pickup
- Establish and provide staff at a date and time for prospective bidders to preview

Auctioneer:

- Photograph and catalog all assets
- Watermark all assets numerically
- Double check Vin #'s and serial #'s (where applicable) against provided list
- Post auction to AAR's bid platform
 - Give municipality exclusive web listing on calendar page
- Develop and create web listings for multiple market channels
 - Hub listings to sister sites.
- Create, proof and execute marketing plan
 - Expand marketing to asset specific markets
 - E-mail blast to our 45,000+ member database
- Provide invoice to buyer(s) with municipality tax id# (if applicable) to serve as bill of sale at DMV
- Collect payments including taxes (If applicable)
- Provide detailed accounting of auction
 - Sale price of each asset
 - Total sales
 - Any and all expenses incurred for municipality



FEE STRUCTURE

Commission

The buyer(s) will pay the commission, not the seller, in the form of a 10% buyers premium. The buyers premium is added to the final sales price. Example: \$1,000 bid price + 10% buyers premium (\$100) = \$1,100 total contract price. The buyers premium is a well-accepted compensation method in the auction business. Buyers are familiar and comfortable with this method of compensation.

Marketing Fees

Marketing and advertising fees will be absorbed by the auctioneer, and may be adjusted accordingly based on total number of assets to be sold. Postcard mailings are a service we can provide at municipality's request, and cost would be deducted directly from proceeds. All other marketing previously mentioned will be covered by AAR.

If municipality should have extremely odd and unusual assets to be sold (items not commonly sold in surplus channels), then an additional marketing plan and budget can be implemented and paid for by the municipality if requested, only after pre-approval to proceed with specialized asset marketing.





VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact	x		Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement	x		Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title

(Will appear as indicated below on Agenda)

AUTHORIZING RENEWAL INTER-MUNICIPAL AGREEMENT WITH WESTCHESTER COUNTY FOR SNOW AND ICE REMOVAL FROM COUNTY ROADS

Summary

Background:

For many years, Westchester County has contracted with municipalities to provide snow and ice removal from County roads.

The County has requested that the Village of Port Chester enter into a renewal agreement from October 1, 2015 to September 30, 2020 for snow and ice removal from County roads with the Village. These roads are Westchester Avenue, North Pearl Street and Bowman Avenue, totaling some 1.72 miles.

Since the Village is in compliance with the recommendations of the County's Area wide 208 Wastewater Management Program with regard to salt storage and application rates, the Village is entitled to a higher, or incentive rate of payment. Upon execution of the agreement, the Village will receive payment from the County for the 2015-2016 winter season. Future annual payments are tied to a selected Consumer Price Index.

Proposed Action

Adopt the resolution.

Attachments

Inter-Municipal Agreement

RESOLUTION

AUTHORIZING RENEWAL INTER-MUNICIPAL AGREEMENT WITH WESTCHESTER COUNTY FOR SNOW AND ICE REMOVAL FROM COUNTY ROADS

On motion of TRUSTEE _____, seconded by TRUSTEE _____

, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

WHEREAS, the Village's agreement with Westchester County for reimbursement for the removal of snow and ice from County Roads has expired; and

WHEREAS, the Village has received a proposed renewal agreement for the term commencing October 1, 2015 through September 30, 2020; and

WHEREAS, the Village is entitled to a higher or incentive rate based on an approved salt shed and other best practices in compliance with the County's Area wide 208 Wastewater Management Program. Now, therefore, be it

RESOLVED, that the Village Manager is authorized to enter into an inter-municipal agreement with Westchester County with regard to snow and ice removal for the term 2015-2020, compensation in 2015-2016 to be \$8,232.00, and thereafter annual payments to be tied to the Consumer Price Index for all Urban Consumers (CPI-U) as provided in the agreement.

Approved as to Form:

Anthony M. Cerreto, Village Attorney

Agreement No. 15-958

THIS AGREEMENT made the _____ day of _____ 20__ by and between

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 148 Martine Avenue, White Plains, New York 10601 (hereinafter referred to as the "County")

and

THE VILLAGE OF PORT CHESTER, a municipal corporation of the State of New York, having offices at 222 Grace Church Street, Port Chester, New York 10573 (hereinafter referred to as the "Municipality")

WITNESSETH:

WHEREAS, the County desires to obtain services for the removal of snow and ice from designated County roads within the Municipality to provide for reasonable passage and movement of vehicles over such roads; and

WHEREAS, the Municipality is willing to furnish such services and the County desires to purchase same subject to the terms of the Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and covenants hereinafter set forth, the parties agree as follows:

FIRST: This Agreement shall commence on October 1, 2015 and shall expire on September 30, 2020 unless sooner terminated as herein provided.

SECOND: The Municipality agrees to furnish all necessary personnel, machinery, tools, supplies and equipment to provide snow removal and ice control services upon County roads within the boundaries of the Municipality as identified in the list attached hereto and made a part hereof as Schedule "D". Said services shall be provided upon the paved portions of County roads as well as County road bridges and bridge sidewalks and shall include the plowing or removal of snow and ice, all necessary sanding, and appropriate measures to keep catch basins and drains clear of ice and debris, until the end of the snow removal season.

All work shall be performed in the manner prescribed by the Westchester County Commissioner of Public Works and Transportation (“Commissioner”) or his authorized representative and shall be completed to his satisfaction.

THIRD: For the services performed pursuant to Paragraph **SECOND** above, the County shall pay the Municipality as follows:

(i) At such time as the Municipality’s salt storage and application rates shall be in compliance with the recommendations of the 208 Water Quality Program, as described in the “Best Management Practices Manual” published as part of that Program as amended or supplemented, then payment shall be provided in accordance with the rates set forth in Schedule “B” for those seasons the municipality is in compliance.

(ii) In the event the Municipality shall not be in compliance with the 208 Water Quality Program “Best Management Practices Manual” as amended or supplemented or, if in compliance, shall fail to so comply during the term of this Agreement, then the Municipality shall be entitled to payment only for the actual amounts expended to provide snow and ice removal services up to the maximum rates set forth in Schedule “A”.

(iii) Schedule “D” will be modified to add and/or delete roads, or sections of roads, as they may be added to and/or deleted from the County road system. Such addition and/or deletion may only take place upon the completion of action by the Westchester County Board of Legislators.

Payments will be prorated to pay as follows:

	<u>Roads Added</u>	<u>Roads Deleted</u>
November	90%	10%
December	80%	20%
January	60%	40%
February	30%	70%
March	10%	90%

(iv) During the period October 1, 2016 through September 30, 2017 the amount payable to the Municipality for said period shall be increased by the percentage, if any, that the Consumer Price Index (“C.P.I.”) in the month of June, 2016 has increased over the C.P.I. in the month of June, 2015. For the next period (October 1, 2017 through September 30, 2018) the

2017-2018 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2017 over the month of June, 2016. For the next period (October 1, 2018 through September 30, 2019) the 2018-2019 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2018 over the month of June, 2017. For the next period (October 1, 2019 through September 30, 2020) the 2019-2020 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2019 over the month of June, 2018. In no event, however, shall the increase in the amount payable by the County for the services rendered hereunder exceed three and one half percent (3 ½%) in any year of the Agreement over the preceding year's amount.

In the event the C.P.I. decreases during any one (1) year term of this Agreement, the amount payable by the County shall decrease accordingly, but in no event shall the amount payable decrease below the amount payable during the first one (1) year term of this contract.

For the purpose of this paragraph, the C.P.I. shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for New York, Northeastern New Jersey Area as published by the United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. as the "Consumer Price Index for all Urban Consumers" (CPI-U) 1982-84 base = 100.

If the Federal government shall cease to publish such index, then the substitute index published shall be used for the purpose of adjusting the amount payable to the Municipality.

FOURTH: Any and all requests for payment to be made shall be submitted within thirty (30) days after notice by the Department of Public Works and Transportation, on a properly executed claim form together with an itemized schedule of amounts expended to furnish such services. Payment shall be made only after approval by the Commissioner.

This Agreement shall be deemed executory only to the extent of money appropriated and allocated by the County for the performance of the terms hereof and no liability under this Agreement shall be incurred by the County beyond moneys available for the purposes thereof.

FIFTH: The Municipality shall keep accurate records of its business operations hereunder in accordance with generally accepted accounting principles.

The Commissioner, or his duly authorized representative, shall have the right to inspect and audit such records and statements at all reasonable times to insure that the Municipality is complying with the terms of this Agreement. To the extent practicable such inspections shall take place at the offices of the Municipality. The Municipality agrees that all equipment charges shall be in accordance with rates established by the New York State Department of Transportation and all labor charges shall be in accordance with the prevailing rates within the Municipality for similar highway work.

SIXTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the moneys appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a

proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

SEVENTH: The County, upon thirty (30) days written notice to the Municipality, may terminate this Agreement in whole or in part when the County deems it is in its best interest. Subject to the availability of funds, the Municipality shall be compensated for services rendered under this Agreement prior to the effective date of such termination.

In the event the Commissioner determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Notice shall be effective on the date of receipt. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by Municipality of any particular duty or obligation under this Agreement shall be deemed a material breach of the Agreement justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective on the date of receipt.

EIGHTH: Except in an emergency, the Municipality shall not assign, sublet, subcontract or otherwise dispose of this Agreement, or any right, duty or interest herein, without previous written consent of the County. No assignment, subcontracting, subletting or other such disposition of this Agreement, either with or without such consent of the County, shall serve to relieve the Municipality of its obligations hereunder.

All subcontracts entered into by the Municipality shall provide that subcontractors are subject to and must comply with all terms and conditions set forth in this Agreement. All work performed by the subcontractor shall be deemed work performed by the Municipality.

NINTH: The Municipality shall comply with all applicable federal, state and local laws, rules and regulations including, but not limited to, all applicable provisions of the Labor Law, Workers' Compensation Law, State Unemployment Insurance Law, Federal Social Security Law and any and all rules and regulations promulgated by the United States Department of Labor and/or the Industrial Commissioner of the State of New York and all amendments and additions thereto.

TENTH: The Municipality hereby acknowledges and agrees:

(a) that in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no Municipality, subcontractor, nor any person acting on behalf of such Municipality or subcontractor, shall by reason of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic pre-disposition or carrier status, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) that no Municipality, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic pre-disposition or carrier status;

(c) that there may be deducted from the amount payable to the Municipality by the County under this Agreement a penalty of FIFTY (\$50.00) DOLLARS for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement;

(d) that this Agreement may be cancelled or terminated by the County, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this section of the Agreement; and

(e) the aforesaid provisions of this section covering every agreement for or on behalf of the County for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

ELEVENTH: The Municipality, in its own name and naming the County as an additional named insured, shall, at the commencement of the term hereof, obtain and maintain in continuous effect for the term of this Agreement, policies of insurance providing for coverage in the limits and subject to the conditions set forth in Schedule "C", attached hereto and made a part hereof.

The Municipality agrees to indemnify, defend and hold the County of Westchester and its officers, employees and agents harmless from and against any and all liability, loss, damage or expense the County may suffer as a result of any and all claims, demands, causes of action or judgments arising out of this Agreement due to the negligent acts or omissions of the Municipality.

The Municipality shall, within ten (10) days of the occurrence thereof, notify the Commissioner of any action, proceeding, claim or demand arising hereunder.

TWELFTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner
Westchester County Department of Public Works and Transportation
Michaelian Office Building
148 Martine Avenue, Room 518
White Plains, New York 10601

With a copy to:

County Attorney
Michaelian Office Building
148 Martine Avenue, Room 600
White Plains, New York 10601

To the Municipality:

Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, New York 10573

THIRTEENTH: VENDOR DIRECT PAYMENT: All payments made by the County to the Municipality will be made by electronic funds transfer (“EFT”) pursuant to the County’s Vendor Direct program. Municipalities doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form prior to receiving an award or purchase order. The EFT Authorization Form, Instructions and related information are annexed hereto as Schedule “E.” Payments will be automatically credited to the Municipality’s designated bank account at the Municipality’s financial institution. Payments are anticipated to be deposited two business days after the voucher/invoice is processed for payment. Saturdays, Sundays, and legal holidays are not considered business days. Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on County check stubs and will contain the date that the funds will be credited to your account. All information received will be treated and handled as strictly confidential. The completed Authorization Form must be returned by the Municipality to the County prior to award of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Finance Department. Any Municipality that fails to return the completed authorization form(s) prior to award of the contract may be considered non-responsive and the proposal may be rejected.

FOURTEENTH: The failure of either party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. No waiver by either party or any provision hereof shall be implied.

FIFTEENTH: This Agreement shall bind the successors, assigns and representatives of the parties hereto.

SIXTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. No change, modification or cancellation of this Agreement shall be effective except by an instrument in writing signed by a duly authorized representative of each of the parties.

SEVENTEENTH: This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

[REMAINING PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the County of Westchester and the Municipality have executed this Agreement.

THE COUNTY OF WESTCHESTER

By: _____
Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation

VILLAGE OF PORT CHESTER

By: _____
Name: Christopher D. Steers
Title: Village Manager

Authorized by the Westchester County Board of Legislators on the 14th day of December, 2015.

Authorized by the Westchester County Board of Acquisition and Contract on the 22nd day of December, 2015.

Approved as to form and
manner of execution

Associate County Attorney
County of Westchester

MUNICIPALITY'S ACKNOWLEDGMENT

STATE OF NEW YORK)

 ss.:

COUNTY OF WESTCHESTER)

On this _____ day of _____ June _____, 2016, before me, the undersigned, personally appeared Christopher D. Steers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

CERTIFICATE OF AUTHORITY
(Municipality)

I, David Thomas
(Officer other than Officer signing agreement)

certify that I am the Village Clerk of the Village of Port Chester
(Title) (Name of Municipality)

(the "Municipality"), a corporation duly organized and in good standing under the
Laws of the State of New York
(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement that Christopher D. Steers
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution
Village Manager of the Municipality, that said agreement
(Title of Person Executing Agreement)

was duly signed for on behalf of said Municipality by authority of its
Board of Trustees thereunto duly
(Town Board, Village Board, Town Council)

authorized, and that such authority is in full force and effect at the date hereof.

(Signature)

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

On this ___ day of ___ June ___, 2016, before me, the undersigned, personally appeared
David Thomas, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the above certificate and
acknowledged to me that he/she executed the above certificate in his/her capacity as
Village Clerk of the Village of Port Chester,
(Title) (Municipality)
the municipal corporation described in and which executed the within instrument.

Notary Public

SCHEDULE "A"

Effective October 1, 2015

Without "208" Incentive

-
- \$2,228.00 per mile for 2 lane roads
 - \$2,938.00 per mile for 3 lane roads
 - \$3,248.00 per mile for 4 lane roads

SCHEDULE "B"

Effective October 1, 2015

With "208" Incentive

-
- \$3,441.00 per mile for 2 lane roads
 - \$4,474.00 per mile for 3 lane roads
 - \$5,011.00 per mile for 4 lane roads

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS (MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, the employer must complete NYS form CE-200, available to download at: www.web.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

SCHEDULE "D"
COUNTY ROADS – SNOW AND ICE AGREEMENT

VILLAGE OF PORT CHESTER

C.R. NO.	COUNTY ROAD NAME	CTR- LINE MILES	2 LANE MILES	3 LANE MILES	4 LANE MILES
43	NO. PEARL ST. & WILLETT AVE.	0.81	0.00	0.70	0.11
104	BOWMAN AVENUE	0.02	0.00	0.02	0.00
112	WESTCHESTER AVENUE	<u>0.89</u>	<u>0.00</u>	<u>0.00</u>	<u>0.89</u>
TOTAL MILEAGE – PORT CHESTER		1.72	0.00	0.72	1.00

SCHEDULE "E"

Westchester County Vendor Direct Program Frequently Asked Questions

1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?

Yes.

3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?

This is to ensure the authenticity of the account being set up to receive your payments.



Westchester County • Department of Finance • Treasury Division

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

Authorization is:
(check one)

- New
- Change

INSTRUCTIONS: Please complete both sections of this Authorization Form and attach a voided check. See the reverse side for more information and instructions.

Mail to: Westchester County, Department of Finance, Treasury Division, 148 Martine Avenue, White Plains, NY 10601
Attention: Vendor Direct

Section I - Vendor Information

1. Vendor Name:

2. Taxpayer ID Number or Social Security Number:

--	--	--	--	--	--	--	--	--	--

3. Vendor Primary Address

4. Contact Person Name:

Contact Person Telephone Number:

5. Vendor E-Mail Addresses for Remittance Notification:

6. Vendor Certification: *I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment. In the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.*

Authorized Signature

Print Name/Title

Date

Section II - Financial Institution Information

7. Bank Name:

8. Bank Address:

9. Routing Transit Number:

--	--	--	--	--	--	--	--	--	--

10. Account Type:
(check one)

- Checking
- Savings

11. Bank Account Number:

12. Bank Account Title:

13. Bank Contact Person Name:

Telephone Number:

14. FINANCIAL INSTITUTION CERTIFICATION (required ONLY if directing funds into a Savings Account OR if a voided check is not attached to this form): *I certify that the account number and type of account is maintained in the name of the vendor named above. As a representative of the named financial Institution, I certify that this financial Institution is ACH capable and agrees to receive and deposit payments to the account shown.*

Authorized Signature

Print Name / Title

Date

(Leave Blank - to be completed by Westchester County) - Vendor number assigned

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Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave, Room 720, White Plains, NY 10601, Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. **THIS IS VERY IMPORTANT.** This is the e-mail address that we will use to send you notification and remittance information two days prior to the payment being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company official sign and date the form and include his/her title.

Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the title of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account OR you can not attach a voided check for your checking account, this line needs to be completed and signed by an authorized bank official. **IF YOU DO ATTACH A VOIDED CHECK FOR A CHECKING ACCOUNT, YOU MAY LEAVE THIS LINE BLANK.**

IN WITNESS WHEREOF, the County of Westchester and the Municipality have executed this Agreement.

THE COUNTY OF WESTCHESTER

By: _____
Jay T. Pisco, P.E.
Commissioner of Public Works and Transportation

Approved as to Form:

VILLAGE OF PORT CHESTER

Anthony M. Cerreto,
Village Attorney

By: _____
Name: Christopher D. Steers
Title: Village Manager

Authorized by the Westchester County Board of Legislators on the 14th day of December, 2015.

Authorized by the Westchester County Board of Acquisition and Contract on the 22nd day of December, 2015.

Approved as to form and
manner of execution

Associate County Attorney
County of Westchester

Veltri, Maryanne

From: Utchel, Kathleen <kau1@westchestergov.com>
Sent: Tuesday, June 7, 2016 9:00 AM
To: Veltri, Maryanne
Cc: Dispenza, Michael; Kopenhaver, Robert; Prakash, Leelama
Subject: Removal of Snow and Ice from County Roads
Attachments: 15-958 - Snow & Ice - Village of Port Chester (REV#8 w EFT, E-Mail logo).doc

Importance: High

Good morning Ms. Veltri.

I am following up on the above agreement paperwork that was mailed to the Village Manager's attention for execution (see attached letter). Our file indicates that the agreement and required insurance has not been returned. Can you please advise on the status. If you cannot locate the agreement, please let me know and I can forward another copy. Upon receipt of the signed/notarized paperwork and insurance, the agreement will be processed by the County and our Finance Department can then issue payment in the amount of \$8,232.00 for reimbursement for the 2015/2016 winter season.

Thank you.

Kathleen A. Utchel

Administrative Assistant - Contract Administration
Westchester County Department of Public Works and Transportation
148 Martine Avenue, Room 522
White Plains, New York 10601
Phone: (914) 995-2583 Fax: (914) 995-6409
kau1@westchestergov.com

Westchester County wants to be able to contact you in an emergency. Sign up at www.westchestergov.com <<http://www.westchestergov.com>>

ROBERT P. ASTORINO
County Executive

DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION

JAY T. PISCO, P.E.
Commissioner

December 23, 2015

Mr. Christopher Steers
Village Manager
Village of Port Chester
222 Grace Church Street
Port Chester, New York 10573

Re: **Agreement No. 15-958**
Removal of Snow and Ice from County Roads for the
Five (5) Year Term October 1, 2015 through September 30, 2020

Dear Mr. Steers:

Enclosed for execution please find one (1) agreement document for the above. Kindly have the agreement signed by the appropriate official of your municipality, and have the Acknowledgment form notarized for that official. In addition, please have an official other than the official signing the agreement complete and sign the top half of the Certificate of Authority form. The bottom half of the Certificate of Authority form must be notarized for the other officer. All forms shall contain original signatures and be notarized where applicable.

In accordance with Schedule "C" of the agreement, a Certificate of Insurance evidencing coverage for Worker's Compensation and Disability**, Employer's Liability, Automobile Liability, and General Liability must be submitted with the executed Agreement document. **Please note that the County of Westchester must be named as additional insured with respect to General Liability.**

**Please be advised that effective December 1, 2008 the State of New York Workers' Compensation Board requires all government entities to ensure that businesses applying for permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. The State of New York Workers' Compensation Board has advised us that we can no longer accept the ACORD form as acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

- **Certificate Form C-105.2 or State Fund Insurance Company Form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.**
- **If your municipality is self-insured for Workers' Compensation, please submit Form SI-12, Certificate of Workers' Compensation Self-Insurance, or Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance.**

Please make a note of the Schedule "E" Vendor Direct Program Instructions and Electronic Funds Transfer (EFT) Form. If your municipality is not already enrolled in this program, please complete and sign both Sections I and II of the EFT Form and **attach a voided check**. If a voided check cannot be provided, please have your financial institution certify Item 14, Financial Institution Certification under Section II. **If your municipality has previously submitted this form and there is no change to the information previously submitted, please check the "No Change" box located in the upper right-hand corner of the form, and complete lines 1 through 6 only of Section I.**

Please return the above to my attention, Westchester County Department of Public Works and Transportation, 148 Martine Avenue, Room 522, White Plains, New York 10601, within fourteen (14) days from the date of this letter.

****WHEN RETURNING THE AGREEMENT, PLEASE INCLUDE YOUR E-MAIL ADDRESS.****

Upon receipt of the above, the agreement will be processed and a fully executed copy will be **e-mailed** to you for your files. Should you have any questions, please call me at (914) 995-2594.

Very truly yours,

Michael R. Dispenza

Michael R. Dispenza
Contract Administrator

MRD/ku

Encl.

cc: J. Pisco
J. Nicoletti
J. Antonaccio
R. Kopenhaver
L. Prakash
S. Donnelly
J. Statini
W. Makar
K. Roseman
J. Nicholson
G. Ireland
File



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Department: Office of the Village Attorney

BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Sponsor's Name: BOT Member

Description	Yes	No	Description	Yes	No
Fiscal Impact	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Public Hearing Required	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Funding Source:			BID #		
Account #:			Strategic Plan Priority Area		
	Yes	No	Choose a Strategic Plan Area		
Agreement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Manager Priorities		
Strategic Plan Related	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Choose a Manager Priority		

Agenda Heading Title
(Will appear on the Agenda as indicated below)

Status of LED Lighting Conversion

Summary

Background:

The Mayor has requested discussion of staff's efforts as to the proposed LED lighting conversion.

Proposed Action

Discuss

Attachments

March 3, 2016

City of Port Chester– Proposal to Piggyback

Energy Savings Estimate, Project Cost & Lease/Financing

Lumen Light Solutions is pleased to offer an extension of the terms included in the City of New Rochelle / Village of Elmsford Bid dated August 13, 2014 under the terms of the General Municipal Law Section 103. By virtue of including the Village of Elmsford as well as the appropriate “piggyback” language in the bid document, Lumen is pleased to be able to extend the same unit pricing and terms.

ENERGY SAVINGS CALCULATION

Based on the ConEd Westchester Streetlight Database provided, Lumen Light Solutions has performed an analysis for converting the entire streetlight system to Philips LED Roadway Luminaires. These fixtures were selected by the City of New Rochelle after arduous research and testing.

Municipalities are billed by NYPA based on a production and delivery charge for Westchester Street Lighting under Service Classification 66. A rate of 23-cents per watt was specified to be used, and is reflective of the current 2014 and 2015 base rates for combined ConEd Delivery and NYPA Production.

CURRENT SYSTEM						
	Count	ABH	KWH	Energy Rate	Annual Cost	
Various HID Fixtures per WSLDB	1856	4270	1,333,831.00	\$ 0.23	\$ 306,781	
NEW						
Fixture	LED Watts	Quantity	ABH	KWH	Energy Rate	Annual Cost
RFS 35W	38	1060	4270	171,995.60		
RFS 54W	54	209	4270	48,191.22		
RFM 72W	73	41	4270	12,780.11		
RFM 108W	106	465	4270	210,468.30		
RFL 180W	174	81	4270	60,181.38		
				503,616.61	\$ 0.23	\$ 115,832
				SAVINGS (annually)	830,214.39 kwh	= \$ 190,949
				62%		62%

As the energy rate increases going forward so will the energy savings; however this proposal does not attempt to forecast the future price of energy nor the rate charged to municipalities by ConEd for delivery or NYPA for provision of energy. Therefore, the proposal is based on today’s known rate.

Likewise, savings does not include any maintenance savings realized nor refunds due to database corrections.

COST OF PROJECT CALCULATION

The project cost for auditing the system and reviewing the developed replacement program with the City, furnishing and installing the fixtures is based on the piggy-backing provision of the New Rochelle bid, and is shown in the table below:

	Philips LED Equivalent	Quantity	Unit Price *	Total
HPS 70W equivalent	RFS 35W 1LED 4K	1060	336.15	\$ 356,319.00
HPS 100W equivalent	RFS 54W 16LED 4K	209	341.25	\$ 71,321.25
HPS 150W equivalent	RFM 72W 32LED 4K	41	377.35	\$ 15,471.35
HPS 250W equivalent	RFM 108W 48LED 4K	465	420.15	\$ 195,369.75
HPS 400W equivalent	RFL 180W 80LED 4K	81	564.5	\$ 45,724.50
Photocells (extra life)		1856	24.11	\$ 44,748.16
<i>Decorative fixtures can be accommodated also</i>				
MPT		1856	16.79	\$ 31,162.24
TOTAL PROJECT COST				\$ 760,116.25

The Unit Price is being extended from the New Rochelle contract pricing.

Scope of Services – included in Project Cost

“Furnishing, Installation and Financing of Energy Efficient Street Lighting” – a full-service, turn-key approach:

1. **Perform Audit & Develop Audit Report with Replacement Plan**
 – key to effective conversion and matching existing lighting levels is knowing what is really in the field. The Audit Report will: detail field conditions compared to the inventory; assist development of a detailed replacement plan; facilitate the system mapping to expedite installation; and confirm the energy savings.

 Actual lighting levels will be mapped providing the opportunity to see what actually exists in the field and make adjustments based on the desired lighting plan.
2. **Furnish of LED Cobraheads** (and decorative fixtures, if desired)
 – order the fixtures in a manner consistent with the inventory required to accomplish the installation plan, receive delivery and store fixtures until installed.
3. **Install fixtures** – in a one-for-one replacement in accordance with the Conversion/Replacement Plan.
4. **Effectuate Savings / Update ConEd Database** – To develop the Audit Report and Replacement Plan, Lumen painstakingly matches the records in the ConEd database to the lights in the field, converts each fixture and then modifies the appropriate record to realize energy savings.
5. **Provide a Streetlight Database** that provides a mapping and tracking tool for the LED inventory in both a GIS format compatible with ArcView, if desired, and in a GoogleEarth mapping for ease of use by DPW crews.
6. **Payments from Energy Savings** using the NYS Energy Law that allows energy efficiency measures to be leased, 5-year and 7-year options allow the Project Cost to be paid from the energy savings realized.

NO PAYMENTS UNTIL CONVERSION COMPLETE

BENEFITS OF THE LEASE/FINANCE OPTION

- ✓ **Not a penny is paid until all streetlights are installed.**
- ✓ **Uses Energy Savings to Pay for the Conversion** – energy savings are accumulated –and will be realized– as each light is converted under Lumen’s approach.
- ✓ **Allows bonding or borrowing capacity to be used for other capital improvements.** Using the NYS Energy Law financing is handled via a “lease” to the City for the financing term and thus does not affect bonding or borrowing capacity.
- ✓ **Better value and a more streamlined process** than other available financing options.
 Worth noting is that Lumen’s financing option compares favorably with NYPA financing when including all of NYPAs costs and performing a cost vs. benefit analysis, and is comparable with most municipal bonding rates when considering all costs associated with bonding.
- ✓ **Fixture Cost for Inventory Replenishment Fixed at current Volume Cost.**
- ✓ **At the end of the Lease period, the fixtures are yours.**

SIMPLE LUMP SUM ANNUAL PAYMENTS

Lumen’s proposal is simple: Payments will be made annually, in **fixed lump-sum** amounts. The first invoice will be submitted upon Substantial Completion of installation and payment due within 30-days. Thereafter, payments are made on an annual basis on the anniversary of the first payment. This method was established to enable the streetlight conversions to be paid for from the energy savings generated and therefore not impact the capital program or operating budgets.

ENERGY SAVINGS (see pg 1)	\$	190,949	\$	190,949
ANNUAL PAYMENT	\$	176,500	\$	136,000
Net - Remainder to Use	\$	14,449	\$	54,949

Energy Savings Pays for the Project Cost

Without the financing option, Lumen payments will need to be made to purchase a supply of fixtures to have on hand for installation, and payment for the Audit upon submission of the Audit. Invoices will then be submitted and require payment each week of installation. The City will realize savings based on the date each light is converted; however funds will have to be set aside for progress payments.

Note –during the Audit/Field Verification phase, the actual quantity of light in the field will be determined. The Project Cost and payments will be adjusted to account for differences in quantities.

The financed and non-financed payments are compared in the Table 1 below. Again, under the financing option, the City pays nothing until the streetlights are installed.

Timeline	Anticipated Timeframe	Payments With Financing	Payments Without financing
Award			
NTP (Notice to Proceed)	Within 1 mo after award	NONE	Initial Fixture Order Material Payment
Audit / Verification of Inventory (Matching Field to CE DB)	3 months after NTP	NONE	Payment for Audit upon Submission of Audit
Installation Begins	Upon Audit Acceptance	NONE	<i>Upon receipt of fixtures</i> Weekly Invoices with payments due in 10 days – reflecting installations each week.
Substantial Completion	4 months after NTP	Invoice will be submitted upon Substantial Completion.	Final payment.
PAYMENT	BEGIN PAYMENTS 60-days after Substantial Completion	Lump Sum Fixed Annual Payment based on financing term	Fully paid.

Lease/Finance Option Payment Schedule – Payments under the lease/financing option are fixed annual lump sum payments This allows the payments to be made from the energy savings generated by the conversion of the streetlight system avoiding impact to the capital and operating budgets.

	5-year Financing	7-year Financing
At Substantial Completion	\$176,500	\$136,000
Year 2 – SC+1	\$176,500	\$136,000
Year 3 – SC+2	\$176,500	\$136,000
Year 4 – SC+3	\$176,500	\$136,000
Year 5 – SC+4	\$176,500	\$136,000
Year 6 – SC+5		\$136,000
Year 7 – SC+6		\$136,000
Total Cost (Payments x Term)	\$882,500	\$952,000

VALUE-ADDED TURN-KEY SOLUTION
... In Summary:

1. **Lumen Manages the Entire Process** and assist with PR needs (handouts/maps/etc)
2. **Assures ALL lights are Converted**
3. **Effectuates Changes in ConEd Database to Realize Energy Savings**
4. **Finance with Payments out of Energy Savings** with monitoring of billings during lease period, and coordination of any warranty issues & inventory

Interest rate is based on the bank cost of funds borrowing rates as of 8/11/14 as provided for in the New Rochelle bid documents.

The Lease Period also includes cost of continued consulting services and energy monitoring throughout term of lease, and an **ENERGY SAVINGS GUARANTEE** is available.

Value-Added Benefits of Exercising the Lease/Finance Option

– During the finance period, Lumen provides continued services:

1. **Coordination of any warranty issues or fixture questions** that may arise during the finance period.
2. **Fixture Pricing Held through Lease Period - Provision of an inventory and inventory replenishment of that inventory at known fixture unit prices throughout the financing term.**
Inventory can be included in the initial quantities to have cobra heads on hand in the event of damaged and require replacement. With financing, additional or replenishment inventory can be purchased throughout the financing term at designated unit prices that extend the volume-discount rate for the fixtures from the time of bid throughout the lease period. Lumen will order the inventory, and deliver with an invoice upon delivery.
3. **Monitoring & Coordination of ConEd streetlight database and review of NYPA billings during the financing period.** Lumen can assure that the savings is realized by continuing to check the ConEd database and NYPA billings throughout the financing/lease term and handling any adjustments.
4. **Guaranteed Savings** – As part of the financing solution, Lumen is willing to guarantee the energy savings will cover the payments for the project cost and that ZERO CAPITAL DOLLARS are needed.

STREETLIGHT CONVERSION – VALUE OF LUMEN’S APPROACH

Furnish, Install, Finance and Manage the entire conversion process to minimize municipal staff time required for oversight and management and effectuate energy savings.
<p>> Experienced personnel with a proven track-record of delivering start-to-finish will oversee and manage the entire process – planning, installation, inventory, execution and effectuate the savings and verify savings are realized (and manage issues along the way).</p> <p>> Trained personnel utilize an established and proven GIS-based system architecture to facilitate:</p> <ol style="list-style-type: none"> 1) mapping each fixture and its associated key data 2) developing and coordinating an efficient installation plan and fixture delivery schedule that integrates crew work schedules and manufacturer’s production capacity and plant schedule 3) managing, controlling and coordinating fixture inventory and installation work schedules 4) tracking installation and recording conversion dates via a web-based application 5) collecting any site constraints (ie no power to pole, loose arms, overgrown trees etc.) for timely resolution 6) producing weekly reports of converted fixtures and issues for handling along with tracking resolution 7) collecting and confirming GIS location of each fixture at the time of conversion for an accurate GIS and/or GoogleEarth-based mapping of the street system for ease of maintenance 8) facilitating entry of converted lights into the ConEd database by collecting the actual converted date as a database function (and the initial set-up and homework done in #1 above) 9) assuring all lights are converted and accurately recorded – and Lumen will monitor billings to assure accuracy and savings is realized 10) financing so that no payment is due until all lights are converted, with a payment schedule based upon the energy savings realized covering the annual payment to assure no capital funds are required for the project.
NO PAYMENT UNTIL ALL LIGHTS ARE CONVERTED (with lease/financing option)
Payment schedule set such that the annual energy cost savings cover the project payments
Lumen handles all aspects of converting the streetlight system AND effectuating the changes in the database so that savings are realized as soon as possible. Status Reports will keep municipal staff informed of progress; however, project risk for the elements under Lumen’s control are passed to Lumen vis a vis fixture delivery/installation, inventory management, schedule and cost management).

VILLAGE OF IRVINGTON CONTRACT AGREEMENT

CONTRACT NUMBER:2015-02

1. THE VILLAGE OF IRVINGTON HEREBY NOTIFIES

Contractor: Lumen Light Solutions, LLC (“Lumen”, or “Contractor”)
Address: 969 Midland Avenue
Yonkers, New York 10704
Contact: Heather Cuffel
E-Mail: hcuffel@yonkerscontractingco.com
Phone: 914 378 8831 **Cell:** 914 804 5103

-
2. That the Village of Irvington accepts Lumen’s offer submitted January 15, 2015, to extend the terms, under NYS General Municipal Law Section 103, of Lumen’s **BID/PROPOSAL DATED August 13, 2014 in response to City of New Rochelle Project #15-597-P2 to provide:** All labor, materials, equipment, and services for the design, implementation, and installation of an LED street lighting system to replace current high intensity discharge (HID) fixtures. LUMEN IS HEREBY DIRECTED TO FURNISH SAME IN ACCORDANCE WITH THE TERMS DESCRIBED HEREIN.

The VILLAGE agrees to purchase, and the Contractor agrees to provide the LED street lighting system (“**Equipment**”), together with installation, and other services as provided herein, on the terms and conditions of this Agreement for the sum of **\$238,478.05**, with payments made under the provisions of Schedule B, Section 3, Paragraph B.

During the Installation Period, Contractor will perform the Work identified on **Schedule “B” Scope of Work (“Work”)**, supervise, direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Agreement. The Contractor shall pay for all labor, materials, Equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the execution and completion of the Work during the Installation Period, as set forth in this Agreement.

3. TERM

Contractor shall perform the following Work and Services as mutually agreed and set forth herein, in this Agreement and detailed in the Schedule B “Scope of Work”:

- 3.A. Contractor shall perform a Streetlight Inventory/Audit, as described in the Schedule B Section 1, for the purposes of determining the anticipated energy savings and location of replacement fixtures and development of an installation plan. Such phase shall be referred herein as the “**Inventor/Audit Period**” which shall commence upon receipt of the “Notice to Proceed” and complete within a two (2) month period.

6/5/15

- 3.B. Contractor shall commence installation of LED streetlights upon completion of the Inventory Audit Period and development of an Installation Plan. This phase shall be referred to as the **“Installation Period”**. The VILLAGE OF IRVINGTON shall provide any comments on the Installation Plan within thirty (30) business days upon submission to the VILLAGE. Installation shall be considered substantially complete when all streetlights listed in the Streetlight Inventory and included in the Installation Plan have been attempted to be replaced with LED luminaires and the status identified in the “Weekly Status Reports” provided by the Contractor to the VILLAGE as further described in Schedule B Section 2. The Installation Period shall be Substantially Completed within two (2) months from commencement of Installation.

Upon Substantial Completion of the Installation Period, the Contractor shall submit a Final Weekly Report which shall be followed by an Installation Report documenting the conversion status of all streetlights included in the Inventory Report.

All Work and Services under this Agreement shall be completed in accordance with the above timeframes unless otherwise terminated or extended in accordance with the provisions of this Agreement.

4. Any questions related to this Agreement may be referred to:

VILLAGE OF IRVINGTON
Village Administrator
Larry Schopfer
85 Main Street
Irvington, NY 10533
914-591-4356, fax 914-591-4072

5. The VILLAGE OF IRVINGTON shall provide CONTRACTOR with a fully executed Agreement.
6. USE OF THE TERM “VILLAGE” or “THE VILLAGE” or “CUSTOMER” means THE VILLAGE OF IRVINGTON. The Term “Agreement” or “Contract” includes any and all of the following:
1) Contractor's Bid/Proposal dated August 13, 2014; 2) Schedule “A” Standard Rider to Contracts, 3) Schedule “B” Scope-of-Work, and any additional documents defined herein or therein as comprising the Agreement or Contract. The term “Work” means the work, equipment, materials, and services specified and the obligations imposed upon Lumen under this Agreement. The term “Lumen” or “Contractor” means the person, vendor, firm, or corporation to whom the Agreement is awarded.
7. Payments may be withheld on account of any material breach of this Agreement by the Contractor, but only to the extent that written notice has been provided to the Contractor and the Contractor has failed, within thirty (30) days after the date of receipt of such notice, to commence to cure such breach.

6/5/15

8. This Agreement includes the following Sections:

■ **Definitions**

■ **Schedule A – “Standard Rider”**

1. Change Orders/Amendments
2. Notice to Proceed
3. Progress & Completion
4. Termination & Default
5. Records & Accounts
6. Ownership of Materials
7. Assignment
8. Conflicts of Interest
9. Liens
10. EEO Policy Statement
11. Civil Rights
12. Non-Discrimination Clause
13. Labor Law
14. Materials and Workmanship
15. Waste Removal/Clean-up
16. Safety
17. Contractor’s Status
18. Entire Agreement
19. Governing Law
20. Counterparts
21. Dissemination of Information
22. Notices
23. Indemnification
24. Insurance
25. Force Majeure
26. Authority to do Business in New York
27. Representations and Warranties

■ **Schedule B – “Scope of Work”**

1. Inventory/Energy Audit Period
2. Installation Period: Installation of LED Roadway Luminaires to Replace Existing
3. Payment
4. Performance Security
5. Non-Appropriation of Funds
6. Energy Usage Records and Data
7. Permits and Approvals
8. Coordination During Installation
9. Systems Start-up and Equipment Commissioning

6/5/15

■ **Exhibits**

- A. Notice to Proceed
- B. Certificate of Substantial Completion
- C. Release & Waiver for Stored Materials”, Copy of the Order Release and an Invoice for Partial Payment
- D. Invoice
- E. Proposal to Village of Irvington & Attached BP Sheets 3&4 from City of New Rochelle Bid.

(To be entered by VILLAGE)

AGREED TO AND ACCEPTED THIS DAY OF _____

Month / Day / Year

The three lines below to be completed by /Contractor

On behalf of the Village of Irvington

BY: Print name of Authorized Representative of
Lumen Light Solutions, LLC (Lumen)

Title of Authorized Representative of
Lumen Light Solutions, LLC (Lumen)

Signature of Authorized Representative of
Lumen Light Solutions, LLC (Lumen)

APPROVED AS TO FORM

IRVINGTON VILLAGE COUNSEL

DATE OF VILLAGE BOARD OF TRUSTEES APPROVAL February 5, 2015

VILLAGE OF IRVINGTON



DEFINITIONS

DEFINITIONS. As used in this Agreement, the following words and terms shall have the respective meanings provided below.

- A. **BASELINE ENERGY USE:** A calculation of energy use of the street light system for a specified period that is used to project energy use had the Project not been implemented. It is calculated by taking the energy consumption for a similar period prior to Project implementation (as recorded in the Energy Use History) and adjusting it to reflect changes for agreed upon variables, in accordance with a methodology set forth in the accepted Comprehensive Energy Audit. (Energy use savings (“**Energy Savings**”) attributable to the Project are determined by subtracting actual energy use, calculated on a rated, not a metered, basis, from the Baseline Energy Use for comparable time periods.)
- B. **INVENTORY & ENERGY AUDIT:** An Inventory Audit consisting of a survey of all streetlights owned, operated, and maintained by the VILLAGE will be performed by the Contractor for the purpose of proposing Energy Conservation Measures and performing an ENERGY AUDIT that verifies that the proposed measures have the potential to generate Energy Savings. The results of the Inventory/Energy Audit will be presented in a written report that includes a methodology for the calculation of the Baseline Energy Use and equipment counts, nameplate data, and control strategies.
- C. **ENERGY CONSERVATION MEASURE (ECM):** A measure to reduce energy use or costs, such as the installation of equipment or systems, or modification of equipment or systems, or revised operation procedures.
- D. **ENERGY PERFORMANCE CONTRACT (EPC):** A contract for an energy cost reduction project where the cost of implementing Energy Conservation Measures and any proposed ongoing energy services, and Measurement and Verification activities, is recovered through energy and energy-related cost savings. Financing may be provided directly by the CONTRACTOR or through Third-Party Financing, or a combination of both.
- E. **ENERGY LAW:** As defined in the New York State Energy Law.
- F. **ENERGY USE HISTORY:** A detailed summary of the annual energy consumption of a particular facility prior to project implementation. The history shall include energy use, demand, and cost data. Energy Use History is used to prepare the Baseline Energy Use.

6/5/15

- G. **MEASUREMENT AND VERIFICATION:** The process of monitoring and measuring the energy consumption of a facility or specific equipment or systems, both before and after Project implementation, to determine if guaranteed or Energy Savings are being and have been realized.
- H. **PROJECT:** An energy and energy-related cost reduction program that may include design, engineering, procurement, installation of Equipment, Measurement and Verification, and other services, as set forth in the Scope of Work (Schedule B).
- I. **TOTAL PROJECT COST:** All costs associated with the development and implementation of an Energy Performance Contract, including, but not limited to: the Comprehensive Energy Audit; Energy Conservation Measure design, procurement and installation; financing fees; construction performance and payment bonds; interest charges; training of VILLAGE staff; Measurement and Verification; project management; the Energy Savings guarantee; and Contractor overhead and profit.
- J. **ADDENDA and ADDENDUM** shall mean any additional or modified contract provisions issued in writing by VILLAGE prior to the Notice of Acceptance of Proposal/Contract Award.
- K. **VILLAGE**, shall mean the VILLAGE OF IRVINGTON
- L. **CONTRACT, CONTRACT DOCUMENTS, AGREEMENT, INVITATION TO BIDDERS** and the abbreviation ITB shall mean the Information for Bidders, Invitation to Bidders, Contractor's Bid/Proposal in response to ITB, Scope of Work, Performance and Payment Bond Forms (if applicable), Standard Terms and Conditions, the Energy Performance Contract, and all Schedules and Exhibits to such documents, each as attached hereto. In the event that there are any conflicts between the terms of any of the aforementioned documents, the terms of the Energy Performance Contract shall control.
- M. **CONTRACTOR, CONSULTANT, VENDOR, and PROPOSER** are synonymous and shall mean the Corporation, Firm, Partnership, Individual, or any combination thereof, who has submitted a Bid/Proposal accepted by VILLAGE and which is a party to this Contract.
- N. **NOTICE** shall mean a written notice, demand, consent, approval or request.
- O. **NOTICE TO PROCEED** is the document issued by the VILLAGE Project Manager informing the Vendor that they may begin the work. It is issued after: (a) the Vendor has submitted, and the VILLAGE has accepted, the required bonds and insurance, if necessary; (b) the VILLAGE has secured all required approvals; and (c) the Contract has been executed by all parties.
- P. **PROJECT, WORK, and SERVICES** are synonymous and shall mean all the required obligations of the Contractor hereunder, including but not limited to the performance of any labor or services, the supplying of any goods or materials, the furnishing of any other resources or requirements or deliverables necessary to perform, accomplish, and complete this Contract's objectives as stated in the Scope of Work.

6/5/15

- Q. PROJECT MANAGER shall mean the individual and/or his/her duly authorized representative who is designated by VILLAGE to administer this contract.
- R. SUBCONTRACTOR shall mean an individual or organization that enters into a contract to furnish services or labor and materials or apparatus in connection with the Work directly or indirectly for or on behalf of the Contractor.
- S. SUBSTANTIAL COMPLETION shall mean that all streetlights listed in Inventory/Energy Audit Report have been attempted to be replaced with LED streetlight luminaires and the status identified in the “Weekly Status Reports” provided by the Contractor to the VILLAGE.

(Note — “attempted to be replaced” is used in the context of all streetlights inventoried and identified for replacement will be replaced; however, in the event that a light is unable to be replaced due to outstanding issues/repairs pursuant to Schedule B, paragraph 2.K, then this shall not delay the declaration of Substantial Completion.)

- T. WORK: Collectively, the Equipment, professional services, procurement and project installation and construction related to the project.

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SCHEDULE "A"
RIDER

SECTION 1 - CHANGE ORDERS/ AMENDMENTS

Changes or extra work, beyond Work specified under the Contract, may be authorized only by a written change order or by amendment issued by VILLAGE and approved by the VILLAGE Project Manager or his/her designee, if required, and accepted by Contractor. The VILLAGE may from time to time consider it in its best interest to change, modify or extend term, conditions or covenants of this Agreement, or request Lumen to perform additional services. Any such change, addition, deletion, extension or modification, including any increase or decrease in the amount of Lumen's compensation, must be mutually agreed upon by and between the VILLAGE and Lumen and shall be incorporated in written amendments (herein called "Amendments") to this Agreement. Such Amendments shall not invalidate, the procurement process or this Agreement nor relieve or release Lumen or the VILLAGE of any of its obligations under this Agreement unless expressly stated therein.

SECTION 2 - NOTICE TO PROCEED

The VILLAGE shall issue a Notice to Proceed concurrent with delivery of a fully executed copy of this Contract to the Contractor. Contractor shall commence work within ten (10) days of acknowledging receipt. The Notice to Proceed form is attached hereto as Exhibit A.

SECTION 3 - PROGRESS AND COMPLETION

The time limits provided in this Contract are of the essence. By executing the Contract, the Contractor confirms that the time limits set forth herein are reasonable for performing the Work. The Contractor shall proceed expeditiously with adequate work force and shall complete the Work within the period specified under the Contract in a satisfactory and proper manner, as reasonably determined by the VILLAGE, according to professional industry standards.

Payments shall be made in accordance with Schedule B, Section 3.

SECTION 4 – TERMINATION and DEFAULT

(a) Termination by VILLAGE:

VILLAGE may terminate the Contract during the Installation Period for the following reasons:

- i. Subject to the VILLAGE's payment obligations set forth in this Section, the VILLAGE may terminate this Agreement, except that in the following circumstances, termination is effective only if the VILLAGE has provided written Notice to Contractor, and Contractor has failed, within thirty days of the receipt of such notice, to commence to cure the following:
 - a. Contractor's failure to make payment to laborers, material suppliers or Subcontractors;
 - b. Contractor's failure to use skilled workers in performing the Work, and/or
 - c. Contractor's failure to abide by applicable Federal, State, and/or Local laws and regulations.
- ii. The VILLAGE may order Contractor in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as the VILLAGE may determine to be appropriate for its convenience for a period of up to 6 months. Any adjustments to the terms of the Contract caused by such suspension, delay or interruption may require increases to the Contract price, compensation, Contractor's fee, extension of the date of Substantial Completion and/or reimbursement of any increased costs directly attributable to such delay. Notwithstanding the foregoing, no such adjustments shall be made where the Parties agree that Contractor is responsible for the suspension, delay, or interruption of Work.

(b) Termination by Contractor during Installation Period:

- i. Contractor may terminate this Agreement if Contractor's performance becomes impracticable through no fault of Contractor, including where such impracticability arises from activities by the VILLAGE, its employees or agents, where such impracticability relates to Contractor's inability to perform its obligations and not to Contractor's judgment as to convenience or the desirability of continued performance. Termination shall be effected by the Contractor delivering to the VILLAGE at least thirty (30) days prior to the termination date, a Notice stating (i) that the Contractor is terminating this Agreement, (ii) the date as of which this Agreement will terminate, and (iii) all facts giving rise to the Contractor's right to terminate under this subsection and if VILLAGE fails to cure the default within thirty (30) days of written notice. A copy of the Notice shall be given to the Commissioner

(c) Obligations Upon Termination.

- i. Upon termination of this Agreement by either Party under Sections 4(a)-(b) above, the VILLAGE shall, within thirty (30) days of termination, pay Contractor for all Work executed up to the date of termination and for all fixtures purchased or committed to be purchased and all fixtures will be provided to the Village upon payment for said fixtures.

6/5/15

Contractor shall prepare an analysis setting forth such sum for the VILLAGE's acceptance.

Payment, if any, under this provision shall be made in full within thirty (30) days of termination.

- ii. If this Agreement is terminated by the Village at any point after the Installation Period, the VILLAGE shall pay to Contractor for work done and equipment furnished.

All Notices of termination/suspension shall be to the appropriate party at the addresses set forth in Section 22 (Notices) below.

SECTION 5 - RECORDS AND ACCOUNTS

Contractor shall maintain accurate records and accounts of Work under this Contract and shall furnish or make available such records and accounts or other information as may be required to substantiate any report or invoice submitted to VILLAGE for payment. The VILLAGE may make reasonable copies of Contractor Work for back-up and archival purposes. The VILLAGE shall reproduce any such material accurately and include all original copyright and trademark notices, claims of confidentiality or trade secrets, and other proprietary rights notices on all back-up or archival copies.

All VILLAGE data (including, without limitation, all content in any media or format entered into, stored in, and/or susceptible to retrieval for the VILLAGE's computer systems) shall remain the property of the VILLAGE. Contractor shall not use the VILLAGE data other than in connection with providing the Work/Services pursuant to this Agreement.

The Contractor shall maintain and retain, for a period of seven years (7) following the date that is the later of (i) termination; or (ii) final payment, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually, pertinent to performance under this Agreement.

The Contractor acknowledges that Contractor Information in the VILLAGE's possession may be subject to disclosure under Article 6 of the New York State Public Officer's Law ("Freedom of Information Law" or "FOIL"). In the event that such a request for disclosure is made, the VILLAGE shall make reasonable efforts to notify the Contractor of such request prior to disclosure of the Information so that the Contractor may take such action as it deems appropriate.

SECTION 6 - OWNERSHIP OF MATERIALS

Upon the execution of this Agreement, any reports, documents, data, designs, drawings, photographs and/or any other materials produced pursuant to this Agreement, and any and all drafts and/or preliminary materials, in any format, to such items, shall become the exclusive property of the VILLAGE.

Notwithstanding the foregoing, Contractor may use, reveal and disclose all reports, plans, studies and other documents and materials, "Work Product", the Deliverables (Comprehensive Energy Audit, Weekly and Annual Reports), the fact that it performed the Project on behalf of the VILLAGE and the scope and results of the Project, including energy savings, without restriction.

Unless stated otherwise in this Agreement, Contractor retains all rights, title and interest including all intellectual property interests such as copyrights, patent rights, trademark rights and trade secret rights, in any pre-existing Contractor property intellectual property interests, which includes Contractor's Bid and all enclosures thereto. Contractor hereby grants the VILLAGE a non-exclusive, nontransferable, royalty-free, perpetual internal use license to use Contractor work product that are incorporated into Deliverables.

SECTION 7 – ASSIGNMENT

Contractor shall not assign, transfer or otherwise dispose of its rights, privileges or responsibilities under the terms of this Contract, without VILLAGE's prior written consent, such consent not to be unreasonably withheld. In the event there is no prior written consent from VILLAGE such transfer, assignment, or other disposition shall be void. Notwithstanding the foregoing, Contractor may collaterally assign or grant a security interest as to rights to proceeds under this Agreement to the financial institution.

SECTION 8 - CONFLICTS OF INTEREST

The Contractor represents that:

- (a) The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the Project to which the Contractor's work relates or the real estate which is the subject of the Project, or in the immediate vicinity thereof, and Contractor has not employed nor will knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Contract.
- (b) No officer, employee, agent or director of the VILLAGE shall participate in any decision relating to this Contract which affects his/her personal interest or the interests of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any officer, agent, director or employee of the VILLAGE have any personal interest, direct or indirect, in this Contract.
- (c) The Contractor shall cause, for the benefit of the VILLAGE, every contract with any Subcontractor to include the representations contained in subsections (a) and (b) of this Section. The Contractor will take such action in enforcing such provisions as the VILLAGE may direct, or, at its option, assign such rights as it may have to the VILLAGE for enforcement by the VILLAGE.

6/5/15

SECTION 9 - LIENS

If any mechanic's or materialman's lien is filed against the materials and equipment installed by Contractor by reason of the work, service, or materials performed or furnished to Contractor, Contractor may contest such lien in good faith, but notwithstanding such contest, Contractor shall, within thirty (30) days after filing of the lien, cause such lien to be released of record by payment, bond or order of the court of competent jurisdiction. In the event of Contractor's failure to release of record any such lien within the aforesaid period and without waiving any other rights or remedies that the Village may have under this Contract or at law, the VILLAGE may remove said lien by paying the full amount thereof or by bonding or in any other manner VILLAGE may deem appropriate, without investigating the validity thereof, and irrespective of the fact that Contractor may contest the propriety or the amount thereof, and Contractor, upon demand, shall pay the VILLAGE the amount so paid out by the VILLAGE in connection with the discharge of said lien, reasonable expenses incurred in connection therewith, including reasonable attorney's fees.

SECTION 10 - EEO POLICY STATEMENT

The Contractor shall, in all solicitations, or advertisements for employees placed by or on behalf of the Contractor, state that it is an Equal Opportunity or Affirmative Action employer.

1. Minority and Women-Owned Business Enterprises - The Contractor shall use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performances of this contract. As used in this Contract, the term "minority and woman-owned business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Contractor may rely on written representations by Subcontractors regarding their status as minority and female business enterprises in lieu of an independent investigation.

SECTION 11- CIVIL RIGHTS

The Contractor agrees to comply with the VILLAGE and the State of New York's civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1976, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

SECTION 12 - NON-DISCRIMINATION CLAUSE

The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Contractor will take affirmative action to ensure that all of its employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.

SECTION 13 - LABOR LAW

If this Contract involves the employment of laborers, workmen or mechanics under Articles 8 or 9 of the Labor Law or constitutes a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its Subcontractors may be required or permitted to work more than the number of hours or days set forth therein, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the New York State Labor Department. Furthermore, the Contractor and its Subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Labor Department in accordance with the Labor Law.

SECTION 14 –WORKMANSHIP

In addition to all warranties referred to in Section 27 of this Agreement, the Contractor hereby agrees and guarantees that all Work furnished under the Contract will conform to the terms of this Contract, as to kind, quality, function, design and characteristics of materials and workmanship, and such conformance shall continue for one year from the date of Substantial Completion or the Contractor shall replace any defective material or workmanship without cost to VILLAGE. In accordance with the provisions of Schedule B, in the event that Equipment provided under this Agreement fails to work during the Installation Period due to any reason other than failure of Equipment or defects in Contractor's workmanship, Contractor will promptly notify VILLAGE of such damage so that the damage can be repaired by the VILLAGE or ConEd.

SECTION 15 – WASTE REMOVAL/CLEAN-UP

The Contractor shall remove all waste material generated in connection with the Work from the property of the VILLAGE. All waste material generated in connection with the Work shall become the property of the Contractor and shall be disposed of in compliance with all applicable Federal, State, and local laws, rules, and regulations. The Contractor shall, on a daily basis, thoroughly clean and keep clean the work site, all roadways, sidewalks, and other outdoor areas of any waste material generated in connection with the Work.

SECTION 16 – SAFETY

The Contractor shall provide at its own cost and expense such safety devices for the protection of its employees, and those of any Subcontractor(s), the VILLAGE, the public, and any other persons as

6/5/15

may be necessary and as may be reasonably required by the Project Manager, consistent with the Bid. The Contractor shall perform all work in a safe manner and in compliance with OSHA, EPA, DEP, and all other applicable Federal, State, and local laws, rules, and regulations.

SECTION 17 – CONTRACTOR’S STATUS

Contractor is an independent contractor, is not an employee of the VILLAGE, and does not assume any right, privilege, or duties of any employee.

SECTION 18– ENTIRE AGREEMENT

This Contract, with its schedules and exhibits, integrates all agreements, representations and warranties prior to the date hereof, whether oral or written, between the parties, and constitutes the entire Contract between the parties hereto.

SECTION 19– GOVERNING LAW

This Contract shall be construed in accordance with the laws of the State of New York, without regard to its conflicts of law provisions, and Article 9 of the New York State Energy Law. Moreover, Contractor shall comply with all applicable Local, State, and Federal laws and regulations in performing its obligations under this Contract. Unless otherwise specified in this Agreement, exclusive original jurisdiction for all claims or action with respect to this Agreement shall be in the Supreme Court of Westchester County and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens.

SECTION 20 – COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

SECTION 21 - DISSEMINATION OF INFORMATION

No information concerning Contractor's work and services performed under this contract shall be disseminated to the general public, the news media, or any other person or organization, including public officials, prior to express approval by Contractor and/or the VILLAGE, subject to disclosure under FOIL in accordance with Section 5 hereof.

SECTION 22 – NOTICES

Any Notice which may be or is required to be given under this Contract or by law must be in writing and signed and shall be either (i) delivered by hand (with a signed receipt), (ii) delivered by nationally recognized overnight courier, or (iii) sent by certified mail or registered mail, postage prepaid, return receipt requested to the parties at the following addresses:

(a) if to the VILLAGE, to the 85 Main Street, Irvington, New York, 10533

(b) if to Contractor, at Contractor’s address set forth above, or at such other address as Contractor

6/5/15

may designate in writing, and to James J. Veneruso, Veneruso, Curto, Schwartz & Curto, 35 Grassy Sprain Road, Suite 400, Yonkers, New York 10710.

Unless otherwise specified herein, all such Notices, properly addressed, will be deemed given and received on the date of delivery or refusal thereof.

SECTION 23 – INDEMNIFICATION

The Contractor shall be solely responsible for and shall indemnify and hold harmless the VILLAGE, its officers and employees, (“Indemnified Parties”) from and against any and all liabilities, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages (“Losses”), arising out of or in connection with any acts or omissions that result from the negligence or willful misconduct of the Contractor or a Contractor’s Agent, including, but not limited to, violations of the maintenance procedures and manufacturer recommendations for operation of equipment and Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that the Contractor shall not be responsible for that portion, if any, of a Loss that is caused by the negligence or willful misconduct of the VILLAGE.

The Contractor shall, upon the VILLAGE’s demand and at the VILLAGE’s direction, promptly and diligently defend, at the Contractor’s own risk and expense, any and all suits, actions, or proceedings which may be brought out of or in connection with any acts or omissions that result from the negligence or willful misconduct of the Contractor or a Contractor’s Agent or which are instituted against one or more Indemnified Parties for which the Contractor is responsible under this Section, and, further to the Contractor’s indemnification obligations, the Contractor shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

The Contractor shall, and shall cause Contractor Agents to, cooperate with the VILLAGE in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement, including the acts or omissions of the Contractor and/or a Contractor Agent in connection with this Agreement.

The provisions of this Section shall survive the termination of this Agreement.

SECTION 24 – INSURANCE

Neither the Contractor nor any of its Subcontractors shall commence Work under this Contract until the Contractor has delivered certificates of insurance evidencing the insurance required by this Section and bearing notations evidencing the payment of premiums and coverage and amounts approved by VILLAGE.

Required coverage for Services are indicated by a :

- a. The Contractor shall provide Worker's Compensation Insurance and Employer's Liability Insurance as required under the Worker's Compensation Law.
- b. The Contractor shall maintain Commercial General Liability Insurance, listing VILLAGE as an additional insured, in the minimum amount of \$2,000,000 in the aggregate, \$1,000,000 each incident, with a company or companies licensed in New York State with an A or better Best

6/5/15

Rating.

The Certificate of Insurance for the above coverage **must include the VILLAGE Contract number**, bear a notation evidencing **a minimum of 10-day cancellation notice** to the VILLAGE, and **list the VILLAGE OF IRVINGTON as an additional insured**.

- c. Where professional services are to be performed under this Contract, the Contractor shall carry Professional Liability Insurance in the amount of \$1,000,000 in the aggregate, \$1,000,000 per claim, with a company or companies licensed in New York State with an A or better Best Rating and in a form satisfactory to VILLAGE.

The Contractor shall cause all insurance to remain in full force and effect throughout the term of this Contract and shall not take or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Contractor to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Contractor to maintain required coverages shall be deemed a material breach of this Agreement upon which the VILLAGE reserves the right to consider this Agreement terminated as of the date of such failure.

In the event you receive notice from any third party that a cause of action or claim may be initiated against the VILLAGE in connection with this agreement, Contractor agrees to give immediate written notice of same by certified mail, return receipt requested, to:

- (i) the VILLAGE OF IRVINGTON 85 Main St, Irvington, NY 10533
- (ii) the Corporation Counsel's Office, Same

SECTION – 25 - FORCE MAJEURE

Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, blackouts, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or governmental authorities approval delays which are not caused by any act or omission by the Contractor. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

SECTION 26 - AUTHORITY TO DO BUSINESS IN NEW YORK

Any corporation not incorporated under the Laws of New York State must furnish a copy of its Certificate of Authority from the New York State Secretary of State to do business in the State of New York, in accordance with Article 13 of the New York State Business Corporation Law. You may get additional information at: Department of State, Division of Corporations, 41 State Street, Albany, NY 12231 (518-473-2492).

SECTION 27 - REPRESENTATIONS AND WARRANTIES

A. Each Party warrants and represents to the other that:

- i. it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- ii. its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, applicable articles, authorities and instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized and it constitutes its legal, valid, and binding obligation;
- iii. its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any other agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- iv. it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders or breach of any other agreement to which it is a party, which would materially and adversely affect its ability to perform hereunder.

B. Contractor Warranties:

- i. The Contractor warrants that all Equipment sold and installed during the Installation Period is new and fit for purpose, will be free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and in accordance with manufacturer's instructions.
- ii. The Contractor warrants that it has obtained a manufacturer's warranty for Equipment provided to the VILLAGE transferable to and enforceable by the Village under this Agreement in accordance with the Bid Documents as follows:

LED Roadway Luminaires (finish, driver and LEDs) – ten (10) years

Such warranties shall be in effect from the date of manufacturer's delivery to Contractor, which such delivery to occur after the Parties enter into this Agreement. During the Term of this Agreement, the Contractor will pursue rights and remedies against manufacturers of the Equipment under and subject to the terms of the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. After completion of the Lease Period, the VILLAGE will pursue rights and remedies against manufacturers of the Equipment under and subject to the terms of the warranties.

- iii. Notwithstanding the provisions of this Section 27(B)(ii) above, nothing in this Section shall be construed to alleviate/relieve the Contractor from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

These warranties are in lieu of all other warranties, express or implied, including but not limited to those of merchantability and fitness for a specific purpose.

SCHEDULE B
SCOPE OF WORK

- A. The Scope of Work shall be referenced by two Project periods/phases identified herein as follows and whose Terms are identified in this Schedule B and in Paragraph 3 of the Contract Agreement cover on page 2:
1. Inventory & Energy Audit Period (Section 1 below)
 2. Installation Period (Section 2 below)
- B. It is understood that the VILLAGE is assessed charges based on lamp information contained in the **VILLAGE's Con Edison Street Light Database ("ConEd Database")** that was used as the basis of the Contractor's initial assessment of potential energy savings and which resulted in the anticipated energy savings identified in the Contractor's Proposal which is attached hereto as **Exhibit E**.
- C. Upon execution of this Agreement, VILLAGE shall:
1. provide the most recent ConEd Database to the Contractor in excel format along with a summary of any changes made since issuing a copy of the ConEd Database with the ITB and if none have been made then a letter to that effect.
 2. provide Contractor access to the ConEd Database.
 3. not make any changes to the streetlights portion of the ConEd database for the term of this Agreement.
- D. Throughout the duration of this Agreement, the VILLAGE shall provide its Con Edison and/or NYPA (or any successor energy provider) bill (hereinafter "**streetlight energy bill**") to Contractor on a monthly basis (within ten (10) business days following receipt of the streetlight energy bill) for verification of energy costs and savings.

DETAILED SCOPE OF WORK:

SCHEDULE B–

INVENTORY /ENERGY AUDIT PERIOD

1. INVENTORY / ENERGY AUDIT PERIOD

Performance of Field Verification & Energy Audit

1.A. **Inventory/Audit Period Commencement**

The Inventory/Audit Period will commence within ten (10) business days of Contractor’s receipt of Notice to Proceed (“NTP”) and shall be submitted to the VILLAGE for review within two (2) months.

1.B. **Inventory/Audit Period**

The Contractor shall review the Inventory/Audit the VILLAGE performed of streetlights owned, operated, and maintained by the VILLAGE for the purpose of proposing Energy Conservation Measures and verifying that the proposed measures have the potential to generate energy savings. Contractor will present a written report that provides a **Baseline Energy Audit** hereinafter called the “**Inventory/Audit Report**”.

1.C. **Inventory/Audit Report**

The **Inventory/Audit Report** shall include the methodology for the calculation of the Baseline Energy Use; a summary table that summarizes the existing equipment, equipment counts, new equipment and projected energy savings; and a detailed inventory of the existing streetlights that shows the existing lamp type, model, wattage, burn hours (as stated in the ConEd Database), ConEd identification information (ID number and/or lamp number), and location information. For each replacement lamp recommended, the Report shall provide the new lamp’s model, wattage and performance characteristics of the equipment comprising the proposed measure. The new equipment shall provide consistent or better illumination as current equipment. This information shall constitute the “**Baseline Energy Audit**” (“**Audit**”).

1.D. **ConEd Approval of Fixture Wattage**

As part of the Baseline Energy Audit, the Contractor shall provide cut sheets and other documentation required by Con Edison (“**ConEd**”) to verify the wattage and quantity changes to ensure ConEd’s acceptance of the replacement fixtures and facilitate changes in the ConEd database. The Contractor shall work with Con Edison to ensure Con Edison will approve each lamp type and its kilowatt hour usage based on product cut sheets submitted by the Contractor.

1.E. **VILLAGE Electrical Bills to be Provided to Contractor**

For purposes of performing the Baseline Energy Audit, the VILLAGE will provide its historical streetlight electric bills and any summary tables generated to show the electrical charges incurred and historic rate changes.

1.F. Installation Plan

As part of the Baseline Energy Audit, an *Installation Plan* will be developed by Lumen and presented to the VILLAGE along with the Baseline Energy Audit.

1.G. Inventory/Audit Report & Installation Plan Review by VILLAGE

The VILLAGE shall review the *Baseline Energy Audit* and *Installation Plan* progress submissions and provide comments to contractor within 30 calendar days of receipt.

1.H. Inventory/Audit Progress Meeting

Four months after NTP, the VILLAGE and Contractor shall have an **Inventory/Audit Progress Meeting** to review Baseline Energy Audit and Installation Plan.

The VILLAGE may, at its option, approve the completed portions of the Audit for installation to proceed for the completed and approved portion(s) of the Audit.

1.I. VILLAGE Directed Lighting / Fixture Changes

During review of submitted portions of the *Baseline Energy Audit*, should the VILLAGE identify any locations where it believes the lighting may not be sufficient, or where the VILLAGE desires to increase or decrease the lighting, the VILLAGE shall provide such notice to the Contractor in writing. All such modifications by the VILLAGE should be identified during the Inventory Review/Audit Period and will result in modification of the Contract Price, Payment Terms and Energy Savings as described herein below.

SCHEDULE B–

INSTALLATION PERIOD

2. INSTALLATION PERIOD

Installation of LED Roadway Luminaires to Replace Existing Fixtures

2.A. Installation Period Commences

Once the Baseline Energy Audit and Installation Plan are accepted, the Installation Period shall begin. The VILLAGE may, at its option, approve the completed portions of the Audit for installation to proceed for the completed and approved portion(s) of the Audit.

2.B. Installation Period Timeframe & Substantial Completion

The Installation Period shall be Substantially Completed within two (2) months of approval of the Installation Plan. In the event the VILLAGE approves completed portions of the Baseline Energy Audit and Installation Plan, during the Inventory/Audit Review Period, installation may have commenced concurrently with completing the Review/Audit.

2.C. Issues During Installation

During the Installation Period, if the Contractor encounters a non-functioning or damaged streetlight, the Contractor will report such damage to the VILLAGE so that the damage can be repaired. Such damage will be included in the Weekly Report provided to the VILLAGE, and these items discussed in the Monthly Progress Meetings. If the LED luminaire can safely be installed, the Contractor will install the luminaire and report the

issue; otherwise, the Contractor will return to install the LED luminaire once the damage is repaired. Repairs not effectuated prior to the Contractor reaching Substantial Completion shall be handled pursuant to Paragraph 2.M. below.

2.D. MPT – Maintenance & Protection of Traffic

Contractor shall maintain and protect traffic and protect the public from damage to person and property within the limits of and for the duration of the contract. Traffic shall be maintained per specifications set forth in the New York State Manual of Uniform Traffic Control Devices (NYMUTCD) over a reasonably smooth traveled way which shall be so marked by signs, delineation, guiding devices and/or other methods. All signs, delineation and guiding devices used to maintain, protect and control traffic shall comply with MUTCD.

2.E. VILLAGE Staff Training

During the Installation Period, the Contractor shall provide training for VILLAGE staff in the operation and maintenance of the new streetlights. After Substantial Completion, the VILLAGE, its employees, and subcontractors if any, shall be responsible for operation and maintenance of the new streetlights; however, any adjustments to the model of LED installed at any location will be provided to Lumen for entry in the Con Edison database.

2.F. ConEd Streetlight Database to Effectuate Savings

The Contractor will be provided access to the Con Edison data website that includes the VILLAGE's street light database. Once a new streetlight lamp is installed in the field as approved by the VILLAGE in the Audit, the Contractor will locate that record in the database and submit a change to the lamp type (LED), model number and rated wattage. This change will effect the required changes to generate the change in electric charges. It is understood that ConEd review, approval and effecting the change may require up to a 2-3 month processing time. Contractor will work with ConEd and the VILLAGE to accomplish as expeditious a process as possible. Once Con Edison approves the change, the electric charges for that lamp will be adjusted. The VILLAGE shall provide such assistance/support as may be necessary to obtain ConEdison and/or NYPA approvals as may be required.

2.G. Weekly Installation Report

Contractor is responsible for submitting to the VILLAGE, on a weekly basis, a detailed itemized accounting of all work completed including changes to the database, hereinafter called the "**Weekly Report**".

2.H. Monthly Meetings

During the Installation Period, Monthly Meetings ("**Monthly Meetings**") will be held to discuss progress, review Weekly Reports and discuss any issues which should include but not be limited to the status of any non-functioning existing streetlights requiring repairs by the VILLAGE or Con Ed. Minutes of the meetings will be generated by the Contractor to document items discussed, status and any issues.

2.I. LED Streetlight Database – VILLAGE Streetlight Database

The Audit will form the basis of a new streetlight database. During the Installation Period, Contractor shall record installation of each new light indicated in the database noting each light's status as "installed" on a weekly basis. This new "**VILLAGE Streetlight Database**" shall provide the new lamp model, wattage, burn hours (as provided by Con Edison as of the date hereof), GPS (XY Coordinate) locations for every street light, new installed lamp type, condition, pole number of location, cross street and ID number of lamp heads; and be formulated by using the CEA Inventory adding a field for confirmation of installation, installation date and date entered in the ConEd Database. Once all of the existing streetlights have been converted to LED luminaires, the VILLAGE shall be provided a hardcopy of the complete new VILLAGE Streetlight Database. A database file shall be provided in a graphical electronic format compatible with Arcview to the VILLAGE which identifies location, ConEd ID number, VILLAGE ID number and new fixture/bulb type.

2.J. Replacement Fixtures

Equipment provided under this Agreement shall provide consistent or better illumination as current equipment. The Installation Plan and Baseline Energy Audit will identify methodology for determination of the replacement fixture for review/concurrence by the VILLAGE, and adjustment should the VILLAGE desire. VILLAGE understands that at any time after the Baseline Energy Audit is completed, any modifications to the models installed will impact the anticipated energy savings.

2.K. Final Weekly Report & Substantial Completion

At such a time as the Contractors' Weekly Installation Reports show that all streetlights listed in Audit/Inventory have been attempted to be replaced with LED streetlight luminaires, the Report will indicate that Substantial Completion has been achieved and this shall be the Contractor's "**Final Weekly Report**". The VILLAGE shall acknowledge Substantial Completion within fifteen (15) business days of the Contractor's final Weekly Report.

In the event that there remain lights on the "VILLAGE Issues List" in accordance with Section 2.C above, such VILLAGE-required repair or ConEd required repair remaining outstanding after notice of a non-functioning streetlight was provided in the Contractor's Weekly Report shall not delay declaration of Substantial Completion.

For example, if there are one or more streetlights where the wiring or poles are damaged and require repair by the VILLAGE or ConEd, but the Contractor has gone to the streetlight to replace the streetlight fixture and been unable to accomplish replacement, the non-functioning streetlight shall be noted such in the Weekly Report submission. If the VILLAGE or ConEd fails to repair the streetlight such that the Contractor can return to accomplish the replacement before all remaining streetlights have been replaced, or attempted to be replaced, then the VILLAGE shall acknowledge Substantial Completion without delay by Issuing the Certificate of Substantial Completion attached as Exhibit B.

During the Installation Period, if certain streetlight(s) require(s) immediate conversion from existing to LED streetlight luminaire, the VILLAGE will notify Contractor, and Contractor will make reasonable efforts to complete within fifteen (15) business days.

2.L. Final Monthly Meeting & Punch List

Upon Substantial Completion, any remaining issues shall be assembled into a list and included with the Contractor's Final Weekly Report and a final Monthly Meeting held within ten (10) business days. These outstanding items ("punch list") shall not delay the VILLAGE's issuance of Substantial Completion, but shall continue to be followed by Contractor and VILLAGE during the first year of the Lease Period. At such time as all "punch list" items are resolved, Installation shall be 100% complete which shall constitute Final Completion of Installation.

2.M. The VILLAGE and Contractor shall work together in good faith to facilitate progress of the Installation Period in accordance with Schedule A Section 3 and the "Term" identified herein and on pages 1-2 of this Agreement.

SCHEDULE B—
PAYMENT

3. PAYMENT

LED Streetlight System Owned by VILLAGE

3.A. Not used.

3.B. Payments for the streetlight system will be made as work is performed and/or materials received and stored by Contractor. The unit prices upon which the Project Cost is based include all services to be provided (Audit/Field Verification, Installation, ConEd Database Reconciliation) and materials (LED cobrahead fixtures and photoelectric controls), thus, in order to compensate Contractor for work performed and have fixtures on hand as necessary to perform work, payments will be made as follows:

- a. Upon Submission of the Audit Report, \$30,000 for the work involved in preparation of the Audit Report and accompanying Installation Plan. Contractor will submit an invoice with the Audit Report and the Village will pay the invoice within a period of two-weeks.
- b. Ordering and receipt of fixtures to have on hand is required to begin installation. Contractor will submit a "Request for Advance/Partial Payment, Certificate of Title and Release & Waiver for Stored Materials", Copy of the Order Release and an Invoice for Partial Payment, in the form shown in Exhibit C, upon ordering the materials. Village will commence processing of payment upon receipt. Upon receipt of the material delivery, Contractor will furnish documentation of material delivery to the Village and title in the Village's name and Village will release payment for the fixtures within a period not to exceed two weeks.
- c. During installation, Weekly Reports will be accompanied by Invoices for the fixtures installed, with proportional credits given for payments received for the Audit Report work and Advance delivery/Partial Payment for Ordered and Stored Materials as required under paragraphs (a) and (b) of this Section. A sample invoice is attached as Exhibit 4. Upon receipt of the Invoices, Village shall pay each invoice within two-weeks.

- 3.C. The new **VILLAGE Streetlight Database** shall, provide a complete listing of all streetlights provided to the VILLAGE. Contractor shall confirm that the new VILLAGE Streetlight Database and ConEd Streetlight database match upon Substantial Completion and upon 100% completion (after all existing streetlight streetlights have been replaced with LED streetlights) as noted in Section 2.I above.
- 3.D. The **Total Contract Price** in Contractor's Proposal was based on the Quantities provided in the VILLAGE's as summarized in the Proposal to the Village, which is attached hereto as Exhibit E.
- a. During the Inventory/Audit Review Period, Contractor will perform an INVENTORY/AUDIT of the existing streetlights and compare the inventory to the ConEd Streetlight Database to generate a **Baseline Energy Audit** (Audit) as described in Section 1 above.
 - b. During the Installation Period, the LED streetlights' installation date and confirmation of data entry into the ConEd Database will be recorded and GPS location information collected and added to the Baseline Energy Audit which will then constitute the New VILLAGE Streetlights Database in accordance with Section 2 above.
 - c. Should the quantity of streetlights installed exceed the Quantities included in the Bid Proposal sheet then Contract Price and payment to the Contractor will be adjusted accordingly based on Unit Prices noted in the BP Sheets 3 and 4 and proposal to the Village.
 - d. Should the VILLAGE direct a replacement fixture other than the recommended fixture, the Total Contract Price will be adjusted based on the Unit Prices in the BP Sheets 3 and 4 and proposal to the Village.
- 3.E. Should the Total Contract Price be adjusted as the result of Section 3.D. above, then payments to the Contractor shall be adjusted accordingly and any additional amount owed will be paid upon Substantial Completion.
- 3.F. Any payment that is more than thirty (30) days overdue will accrue interest at a rate of the lesser of one and three quarters of one percent (1.75%) per month or the highest rate allowed by law.

In addition to all of its other rights, in the event the Village defaults in its payment obligations, Contractor reserves the right to suspend its services until the Village pays Contractor for all sums due under this Contract as well as all costs incurred by Contractor resulting from such default, including, but not limited to Contractor's financings costs and additional costs incurred to mobilize Contractor's workforce.

4. **Performance Security**

- 4.A. The Contractor shall provide performance security (in a form acceptable to the Village Attorney) in the amount of the Contract Price which shall be released upon reaching Substantial Completion. The Contractor must promptly repair, replace, restore or rebuild, as the VILLAGE may determine, any finished work in which defects of workmanship may appear, or to which damage may occur because of such defects, during the one-year period after Substantial Completion, except for the parts guarantee in 4.B below.
- 4.B. With the exception of damage due to force majeure, the Contractor shall provide a parts guarantee that includes providing all replacement streetlight luminaires, and any of its components, including but not limited to the lamp, casing or photocell as required and necessary to ensure that all lights are functional in accordance with the warranties specified in the bid documents and as set forth in Schedule A Section 27 (Representations and Warranties). Contractor shall provide a manufacturer's warranty as set forth in Schedule A, Section 28 that shall warranty the fixtures in accordance with the Bid documents as follows:
1. LED Roadway Fixtures (finish, driver and LEDs) - 10 years
- 4.C. During the Installation Period, and as set forth in the EPC, the Contractor may investigate and determine the corrective requirements for each reported malfunction, failure, or outage of the street light head and any of its components including but not limited to the LED array, LED driver, casing or photocell.

5. **Non-appropriation of Funds**

The VILLAGE anticipates that sufficient funds will be appropriated to cover the VILLAGE's payment obligations under this Agreement. In the event no VILLAGE or other funds are appropriated and budgeted, and funds are otherwise unavailable prior to commencement of Work or issuance of the Notice to Proceed, then the VILLAGE will, in writing, immediately notify the Contractor of such occurrence and this Contract shall immediately terminate without penalty or expense to the VILLAGE of any kind whatsoever.

6. **Energy Usage Records And Data**

As part of this Agreement, including as required within this Schedule B "Scope of Work", the VILLAGE has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy usage.

7. **Permits and Approvals**

VILLAGE shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall VILLAGE, however, be responsible for payment of any permit fees. The Equipment and the operation of the Equipment by Contractor shall at all times conform to all applicable federal, state and local code requirements. Contractor shall furnish copies of each permit or license which is required to

perform the work to the VILLAGE before the Contractor commences the portion of the work requiring such permit or license. All VILLAGE permits will be issued at no fee to the Contractor.

8. **Coordination During Installation**

The VILLAGE and Contractor shall coordinate the activities of Contractor's equipment installers with those of the VILLAGE, its employees, and agents. Contractor shall not commit or permit any act which will interfere with the performance of business activities conducted by the VILLAGE or its employees without prior written approval of the VILLAGE.

9. **Systems Startup and Equipment Commissioning**

The Contractor shall test the installed Equipment upon installation, and verify that the Equipment is fully and properly functioning as follows:

- (a) During installation, the Contractor shall remove existing streetlight and test wiring to assure that there is power to the street light head. If there is no power, Contractor will perform minor troubleshooting and, if not resolved, will cap any exposed wires that would otherwise attach to the streetlight and will notify the VILLAGE of the malfunction. If there is power, Contractor will install the Equipment.
- (b) Contractor shall cover the photocell, which should result in illumination of the luminaire. Contractor shall then remove the photocell cover, which should result in extinguishment of the luminaire. Upon confirmation of illumination and extinguishment, testing is complete and the luminaire and photocell shall be considered fully functional.
- (c) If the Equipment does not properly function, Contractor will troubleshoot by testing the Equipment with different photocells and luminaires. If the Equipment continues to malfunction, Contractor will install different, functioning, Equipment and return the malfunctioning Equipment to the manufacturer for a warranty replacement.
- (d) If malfunction results due to any reason other than failure of Equipment or defects in Contractor's workmanship, Contractor will promptly notify VILLAGE of such defect and VILLAGE will perform maintenance work to restore or, as applicable, to enable Contractor to restore, functionality.
- (e) Contractor will make appropriate records during installation, confirming pole numbers, light numbers, GPS coordinates, luminaire installed, and the condition of such installed luminaire as functioning/new. In the event that Equipment does not properly function after minor troubleshooting, such malfunction will be recorded instead of noting that the luminaire was installed, and the Contractor will note that VILLAGE action is required.
- (f) At the end of each week, Contractor shall provide VILLAGE with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in its original proposal by updating the Con Edison and New VILLAGE Streetlight Databases.

Village of Port Chester

\$760,116.00

LED Lights, 5 years

Aa + .25%

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
	-	-	-	-	-
	-	-	4,483.98	4,483.98	-
	145,116.00	0.820%	4,483.98	149,599.98	-
Year 1	-	-	-	-	154,083.96
	-	-	3,889.00	3,889.00	-
	150,000.00	0.990%	3,889.00	153,889.00	-
Year 2	-	-	-	-	157,778.00
	-	-	3,146.50	3,146.50	-
	155,000.00	1.180%	3,146.50	158,146.50	-
Year 3	-	-	-	-	161,293.00
	-	-	2,232.00	2,232.00	-
	155,000.00	1.360%	2,232.00	157,232.00	-
Year 4	-	-	-	-	159,464.00
	-	-	1,178.00	1,178.00	-
	155,000.00	1.520%	1,178.00	156,178.00	-
Year 5	-	-	-	-	157,356.00
Total	\$760,116.00	-	\$29,858.96	\$789,974.96	-

Yield Statistics

Bond Year Dollars	\$2,305.12
Average Life	3.033 Years
Average Coupon	1.2953344%
Net Interest Cost (NIC)	1.2953344%
True Interest Cost (TIC)	1.2936142%
Bond Yield for Arbitrage Purposes	1.2936142%
All Inclusive Cost (AIC)	1.2936142%

IRS Form 8038

Net Interest Cost	1.2953344%
Weighted Average Maturity	3.033 Years

Village of Port Chester

\$760,116.00

LED Lights, 7 years

Aa + .25%

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
	-	-	-	-	-
	-	-	5,179.48	5,179.48	-
	100,116.00	0.820%	5,179.48	105,295.48	-
Year 1	-	-	-	-	110,474.96
	-	-	4,769.00	4,769.00	-
	105,000.00	0.990%	4,769.00	109,769.00	-
Year 2	-	-	-	-	114,538.00
	-	-	4,249.25	4,249.25	-
	110,000.00	1.180%	4,249.25	114,249.25	-
Year 3	-	-	-	-	118,498.50
	-	-	3,600.25	3,600.25	-
	110,000.00	1.360%	3,600.25	113,600.25	-
Year 4	-	-	-	-	117,200.50
	-	-	2,852.25	2,852.25	-
	110,000.00	1.520%	2,852.25	112,852.25	-
Year 5	-	-	-	-	115,704.50
	-	-	2,016.25	2,016.25	-
	110,000.00	1.690%	2,016.25	112,016.25	-
Year 6	-	-	-	-	114,032.50
	-	-	1,086.75	1,086.75	-
	115,000.00	1.890%	1,086.75	116,086.75	-
Year 7	-	-	-	-	117,173.50
Total	\$760,116.00	-	\$47,506.46	\$807,622.46	-

Yield Statistics

Bond Year Dollars	\$3,095.12
Average Life	4.072 Years
Average Coupon	1.5348846%
Net Interest Cost (NIC)	1.5348846%
True Interest Cost (TIC)	1.5309371%
Bond Yield for Arbitrage Purposes	1.5309371%
All Inclusive Cost (AIC)	1.5309371%

IRS Form 8038

Net Interest Cost	1.5348846%
Weighted Average Maturity	4.072 Years



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

BLDG - 01
BOT 7-5-2016

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

Discussion of New State Legislation Addressing Vacant (“Zombie”) Properties

Summary

Background:

Trustee Ceccarrelli has requested discussion of the new state legislation addressing vacant (“zombie”) properties.

After three years in the State Legislature, the Governor has signed into law the “Abandoned Property Neighborhood Relief Act” which seeks to comprehensively the problem on a state-wide level.”.

The main features of this law are as follows

- 1) Creates a definition for “vacant and abandoned” residence
- 2) Expands the existing duty of a mortgagee and a mortgagee’s loan servicing agent to maintain the property in accordance to the New York State Property Maintenance Code prior to a judgment for foreclosure
- 3) Mandates a periodic inspection requirements for mortgagees and their loan servicing agents to make sure the property is occupied

- 4) Requires the Attorney General to establish and maintain a statewide electronic Vacant and Abandoned Property Registry, with a public hotline –
- 5) Authorizes municipalities to intervene in foreclosure actions for an injunction to ensure the property is maintained and the action is timely prosecuted.
- 6) Requires that a new part of the Supreme Court be established for foreclosure actions involving vacant and abandoned property
- 7) Adds a new section to Real Property Actions and Proceedings Law, Section 1308, to establish a special , expedited foreclosure proceeding for mortgagees involving vacant and abandoned property
- 8) Adds a new section 91-g to the State Finance Law to create an Abandoned Property Neighborhood Relief Fund to be disbursed to localities that receive Enforcement Assistance Grants.

Proposed Action

Discuss.

Attachments

Legislative Packet

A06932 Summary:

BILL NO A06932A

SAME AS SAME AS

SPONSOR Weinstein

COSPNR Woerner, Brindisi, Skartados, Russell, Magnarelli, Skoufis, Lavine, Solages, Robinson, Cahill, Barrett, Peoples-Stokes, Mayer, Santabarbara, Hooper, Schimel, Fahy, Wozniak, Titone, Mosley, Rivera, Otis, Schimminger, Colton, Brabenec, Ramos, Steck, Perry, Malliotakis, Hyndman, Goldfeder

MLTSPNSR Ceretto, Curran, Galef, Kearns, McDonald, Murray

Amd §1307, add §§1307-a & 1308, RPAP L; add §91-g, St Fin L

Establishes the "Abandoned Property Neighborhood Relief Act of 2016"; relates to the duty of the mortgagee or its loan servicing agent to maintain property secured by a delinquent mortgage.

A06932 Actions:

BILL NO A06932A

04/10/2015 referred to judiciary
05/28/2015 reported referred to codes
06/15/2015 reported referred to ways and means
01/06/2016 referred to judiciary
02/05/2016 amend (t) and recommit to judiciary
02/05/2016 print number 6932a
02/25/2016 reported referred to codes
03/01/2016 reported referred to ways and means
05/04/2016 reported
05/05/2016 advanced to third reading cal.542
05/24/2016 passed assembly
05/24/2016 delivered to senate
05/24/2016 REFERRED TO HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT

A06932 Committee Votes:

A06932 Floor Votes:

DATE: 05/24/2016 Assembly Vote

YEA/NAY: 116/22

Abbate	Y	Crespo	Y	Gottfried	Y	Lopez	Y	Palumbo	ER	Simon	Y
Abinanti	Y	Crouch	NO	Graf	NO	Lupardo	Y	Paulin	ER	Simotas	Y
Arroyo	Y	Curran	Y	Gunther	Y	Lupinacci	Y	Peoples-Stokes	Y	Skartados	Y
Aubry	Y	Cusick	Y	Harris	Y	Magee	Y	Perry	Y	Skoufis	Y
Barclay	NO	Cymbrowitz	Y	Hawley	NO	Magnarelli	Y	Pichardo	Y	Solages	Y
Barrett	Y	Davila	Y	Hevesi	ER	Malliotakis	Y	Pretlow	Y	Stec	Y
Barron	Y	DenDekker	Y	Hikind	Y	Markey	Y	Quart	Y	Steck	Y
Benedetto	Y	Dilan	Y	Hooper	Y	Mayer	Y	Ra	NO	Stirpe	Y
Bichotte	Y	Dinowitz	Y	Hunter	Y	McDonald	Y	Raia	Y	Tedisco	Y
Blake	Y	DiPietro	NO	Hyndman	Y	McDonough	ER	Ramos	Y	Tenney	NO
Blankenbush	NO	Duprey	Y	Jaffee	Y	McKevitt	Y	Richardson	ER	Thiele	Y
Brabenec	Y	Englebright	Y	Jean-Pierre	Y	McLaughlin	NO	Rivera	Y	Titone	Y
Braunstein	Y	Fahy	Y	Johns	Y	Miller	Y	Robinson	Y	Titus	Y
Brennan	ER	Farrell	Y	Joyner	Y	Montesano	NO	Rodriguez	Y	Walker	Y
Brindisi	Y	Finch	NO	Katz	ER	Morelle	Y	Rosenthal	Y	Walter	NO
Bronson	Y	Fitzpatrick	NO	Kavanagh	ER	Mosley	Y	Rozic	Y	Weinstein	Y
Buchwald	Y	Friend	NO	Kearns	Y	Moya	Y	Russell	Y	Weprin	Y
Butler	NO	Galef	Y	Kim	Y	Murray	Y	Ryan	Y	Williams	Y
Cahill	ER	Gantt	Y	Kolb	NO	Nojay	NO	Saladino	Y	Woerner	Y
Cancel	Y	Garbarino	NO	Lalor	NO	Nolan	Y	Santabarbara	Y	Wozniak	Y
Castorina	Y	Giglio	Y	Lavine	Y	Oaks	NO	Schimel	Y	Wright	Y
Ceretto	Y	Gjonaj	Y	Lawrence	Y	O'Donnell	Y	Schimminger	Y	Zebrowski	Y
Colton	Y	Glick	Y	Lentol	Y	Ortiz	Y	Seawright	Y	Mr Spkr	Y
Cook	Y	Goldfeder	Y	Lifton	Y	Otis	Y	Sepulveda	Y		
Corwin	NO	Goodell	NO	Linares	Y	Palmesano	ER	Simanowitz	Y		

A06932 Memo:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A6932A**SPONSOR:** Weinstein

TITLE OF BILL: An act establishing the "New York state abandoned property neighborhood relief act of 2016"; and to amend the real property actions and proceedings law, in relation to the duty of the mortgagee or its loan servicing agent to maintain property secured by delinquent mortgage and in relation to special foreclosure proceedings for vacant abandoned property; and to amend the state finance law, in relation to establishing the abandoned property neighborhood relief fund

PURPOSE:

To help community residents and municipalities throughout the State better address the growing problem of vacant and abandoned residential properties by creating a statewide registry of such properties and imposing a duty on mortgagees and their loan servicing agents to report these properties to the registry and take earlier (pre-foreclosure) action to identify, secure and maintain them.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 establishes the title of the Act as the "New York State Abandoned Property Neighborhood Relief Act of 2016."

Section 2 amends section 1307 of the Real Property Actions and Proceedings Law to: create a definition of "vacant and abandoned" residential real property; expand the existing duty of a mortgagee to maintain vacant residential real property to include pre-foreclosure "vacant and abandoned" residential property as defined in the bill, and to expand such duty to the mortgagee's loan servicing agent; establish a

periodic inspection requirement for mortgagees and loan servicing agents to determine if residential real property subject to a delinquent mortgage is currently occupied; and make it unlawful for a mortgagee or loan servicing agent, or a person acting on their behalf, to enter residential real property that is not vacant or abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful occupant thereof to vacate the property in order to render it vacant and abandoned.

Section 3 adds a new section 1307-a to the Real Property Actions and Proceedings Law to: require the Attorney General to establish and maintain a statewide electronic Vacant and Abandoned Property Registry that shall be accessible to local officials across the State; require mortgagees or their agents to promptly submit to the statewide Registry information about vacant and abandoned properties, including but not limited

to the current name, address and contact information for the lender or servicer responsible for maintaining the property, whether a foreclosure action has been filed, and any updated material information when it becomes available; require mortgagees or their loan servicing agents to provide prompt written notice to mortgagors, when the mortgage on their residential real property is three monthly payments past due, of the mortgagor's right to occupy the property until he or she is ordered to leave by a court of competent jurisdiction; require the Attorney General to take appropriate measures to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Association are promptly notified when certain properties are added to the electronic registry; authorize a municipality wherein vacant and abandoned residential property is located to intervene as of right in a foreclosure action involving the property for the purpose of requesting injunctive

relief to ensure the property is maintained in accordance with law and that the foreclosure action is timely prosecuted; require the Attorney General to establish and maintain a toll-free hotline that community members concerned about vacant and abandoned properties can call to report such properties and to obtain information relating to such properties, including but not limited to whether a specific property is listed on the Attorney General's statewide Vacant and Abandoned Property Registry and, if so, the identity of the mortgagee or loan servicing company responsible for maintaining the property; and authorize the Attorney General, and any affected locality upon written notice to the Attorney General, to seek injunctive relief and/or civil penalties against mortgagees and/or their agents for violations of RPAPL sections

1307 and 1307-a.

Section 4 requires that a part of the Supreme Court be devoted to foreclosure actions involving property alleged to be vacant and abandoned.

Section 5 adds a new section 1308 to the Real Property Actions and Proceedings Law to establish a special foreclosure proceeding for vacant and abandoned residential real property.

Section 6 adds a new section 91-g to the State Finance Law to create the Abandoned Property Neighborhood Relief Fund, to be comprised of all civil penalties collected by the Attorney General in enforcement actions under RPAPL section 1307-43)(c), and to establish a procedure for the disbursement to localities of Enforcement Assistance Grants from available monies in such fund to aid such localities in the enforcement of RPAPL sections 1307 and 1307-a.

Section 7 establishes an effective date of 90 days after the act shall have become a law.

EXISTING LAW:

Section 1307 of the Real Property Actions and Proceedings Law currently requires a plaintiff in a mortgage foreclosure action who obtains a

Judgment of Foreclosure and Sale involving residential real property that is or becomes vacant to maintain the property until such time as ownership of the property has been transferred through the closing of title in foreclosure or other disposition, and the deed is duly recorded. 2

JUSTIFICATION:

Vacant and abandoned residential properties securing delinquent mortgages fall into disrepair and harm neighboring properties and the surrounding community. These properties are a blight on neighborhoods because they are often boarded up, inhabited by squatters or used for criminal purposes. When a vacant and abandoned property is not maintained for an extended period of time, there is a decline in the community's real estate market and the state's property tax base. There is also an increased likelihood of crime in and around the property. There are instances of such properties being used by criminals to manufacture

and/or distribute illegal drugs. Municipalities are often forced to expend taxpayer funds to prevent a vacant and abandoned property from becoming a public hazard. If a municipality is forced to care for a significant number of vacant and abandoned properties, its budget can be depleted quickly.

Current law, enacted in 2009, imposes a duty on plaintiff-mortgagees to maintain vacant residential properties only after a Judgment of Foreclosure and Sale has been entered. Unfortunately, this law has proven inadequate to address the growing number of vacant and abandoned properties falling into disrepair across New York State. A survey in one jurisdiction showed that most vacant and abandoned properties were not subject to foreclosure actions and, if they were, the cases had not proceeded to Judgment of Foreclosure and Sale. In many instances, the plaintiff-mortgagee abandoned the foreclosure effort. In others, the plaintiff-mortgagee sought to vacate its own Judgment of Foreclosure and Sale, bringing the property outside of the existing maintenance requirement imposed on the plaintiff-mortgagee by statute. There is also evidence showing that current and former New York homeowners have been misled into believing they need to leave their homes earlier in the foreclosure process than they actually have to, resulting in even more vacant and abandoned properties.

In response to this growing threat to communities across New York State, the Abandoned Property Neighborhood Relief Act of 2016 will ensure that homeowners are provided with early notice that they are legally entitled to remain in their homes until ordered to leave by a court and will require mortgagees and their loan servicers and agents to identify, secure and maintain vacant and abandoned properties much earlier in the mortgage delinquency timeline. It will also require that they electronically register these properties with the newly-created Vacant and Abandoned Property Registry to be established and maintained by the Attorney General. The Registry, in turn, will provide a much needed and readily available source of information on vacant and abandoned residential properties to local officials throughout the State, and will be supplemented by a toll-free hotline that community residents can use to report suspected vacant and abandoned properties to the Attorney General and receive information regarding the status of registered properties, including the identity of the mortgagee or agent responsible for maintaining them. The Act also would establish in the State Finance Law a new Abandoned Property Neighborhood Relief Fund, to be comprised of civil penalty monies collected by the Attorney General in enforcement

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actions under the Act, which monies would be used to fund Enforcement Assistance Grants to aid localities in their enforcement of the Act.

PRIOR LEGISLATIVE HISTORY:

2014: A.9341-A/Weinstein -- reported to Ways and Means
2015: A.6932/Weinstein -- reported to Ways and Means

FISCAL IMPLICATIONS:

It is expected that there will be costs to the Office of the Attorney General for the establishment and maintenance of the statewide Vacant and Abandoned Property Registry and the toll-free community resident hotline established by the Act.

EFFECTIVE DATE:

90 days.

A06932 Text:**STATE OF NEW YORK**

6332--A

2015-2016 Regular Sessions

IN ASSEMBLY

April 10, 2015

Introduced by M. of A. WEINSTEIN, WOERNER, BRINDISI, SKARTADOS, KAMINSKY, RUSSELL, MAGNARELLI, SKOUFIS, LAVINE, SOLAGES, ROBINSON, CAHILL, BARRETT, PEOPLES-STOKES, MAYER, SANTABARBARA, HOOVER, SCHIMEL, FAHY, WOZNIAK, TITONE -- Multi-Sponsored by -- M. of A. CERETTO, CURRAN, GALEF, KEARNS, McDONALD, MURRAY -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT establishing the "New York state abandoned property neighborhood relief act of 2016"; and to amend the real property actions and proceedings law, in relation to the duty of the mortgagee or its loan servicing agent to maintain property secured by delinquent mortgage and in relation to special foreclosure proceedings for vacant abandoned property; and to amend the state finance law, in relation to establishing the abandoned property neighborhood relief fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "New York
2 state abandoned property neighborhood relief act of 2016".
3 § 2. Section 1307 of the real property actions and proceedings law, as
4 added by chapter 507 of the laws of 2009, is amended to read as follows:
5 § 1307. Duty to maintain ~~foreclosed~~ property secured by delinquent
6 mortgage. 1. ~~A plaintiff in a mortgage foreclosure action who obtains~~
7 ~~a judgment of foreclosure and sale pursuant to section thirteen hundred~~
8 ~~fifty-one of this article, involving residential real property, as~~
9 ~~defined in section thirteen hundred five of this article, that is~~
10 ~~vacant, or becomes vacant after the issuance of such judgment, or is~~
11 ~~abandoned by the mortgagor but occupied by a tenant; (a) With respect to~~
12 ~~a mortgage loan secured by residential real property, as defined under~~
13 ~~section thirteen hundred five of this article, where the property is~~

EXPLANATION--Matter in *italics* (underscoring) is new; matter in brackets [] is old law to be omitted.

LBD09229-09-6

A. 6932--A

2

1 "vacant and abandoned" as defined in paragraph (b) of this subdivision
2 or a foreclosure action has been commenced against the property because
3 the mortgagor has failed to maintain the property or where a judgment of
4 foreclosure under section thirteen hundred fifty-one of this article has
5 been obtained on the property that has been abandoned by the mortgagor
6 but remains occupied by a tenant lawfully in possession, the mortgagee
7 or its loan servicing agent shall maintain such property until such time
8 as ownership has been transferred through the closing of title in fore-
9 closure, or other disposition, and the deed for such property has been
10 duly recorded; provided, however, that if a municipality or governmental
11 entity holds a mortgage [~~subordinate to one or more mortgagee~~] on the
12 residential real property, the municipality or governmental entity shall
13 not be subject to the requirements of this section.

14 (b) For purposes of this section, residential real property shall be
15 deemed "vacant and abandoned" when: (i) at least three monthly payments
16 are past due on the mortgage loan or the mortgagor has informed the
17 mortgagee or loan servicing company in writing that the mortgagor does
18 not intend to occupy the property in the future; and (ii) either: (A)
19 there is a reasonable basis to believe that the property is not occupied
20 which shall be determined in accordance with the requirements of para-
21 graph (b-1) of this subdivision; (B) such residential real property is a
22 risk to the health, safety or welfare of the public or any adjoining or
23 adjacent property owners, due to acts of vandalism, loitering, criminal
24 conduct, or physical destruction or deterioration of the property; or
25 (C) the relevant governmental authority has declared the property unfit
26 for occupancy and to remain vacant and unoccupied or to be demolished.
27 Where a mortgagee or loan servicing company has received written notice
28 from a mortgagor that such mortgagor does not intend to occupy such
29 property in the future, the mortgagee or loan servicing company shall
30 promptly notify the attorney general in writing of its receipt of such
31 notification and the date thereof.

32 (b-1) For purposes of paragraph (b) of this subdivision, a reasonable
33 basis to believe that residential real property is not occupied shall,
34 at a minimum, be based upon periodic inspections of such property, at
35 least thirty days apart, where two or more such inspections reveal
36 evidence of abandonment. For purposes of this subdivision, "evidence of
37 abandonment" shall include but not be limited to any of the following
38 conditions: (i) overgrown or dead vegetation; (ii) accumulation of news-
39 papers, circulars, flyers or mail; (iii) past due utility notices,
40 disconnected utilities, or utilities not in use; (iv) accumulation of
41 trash refuse or other debris; (v) absence of window coverings such as
42 curtains, blinds, or shutters; (vi) one or more boarded, missing or
43 broken windows; (vii) the property is open to casual entry or trespass;
44 or (viii) the property has a building or structure that is or appears
45 structurally unsound or has any other condition that presents a poten-
46 tial hazard or danger to the safety of persons.

47 (b-2) For purposes of determining whether residential real property is
48 occupied, the mortgagee or loan servicing company shall conduct or cause
49 to be conducted periodic inspections of such property at least once
50 every thirty days commencing no later than seven days after the date
51 upon which two mortgage payments on such property are past due, or soon-
52 er if so required by federal statute, rule, regulation, published guid-
53 ance, or other requirements of the Federal National Mortgage Associ-
54 ation, Federal Home Loan Mortgage Corporation or Federal Housing Finance
55 Agency.

A. 6932--A

3

1 (b-3) For purposes of paragraph (b) of this subdivision, residential
2 real property shall not be deemed "vacant and abandoned" where such
3 property is: (i) an unoccupied building which is undergoing
4 construction, renovation or rehabilitation that is proceeding to
5 completion, and the building is in compliance with all applicable ordi-
6 nances, codes, regulations and statutes; (ii) a building occupied on a
7 seasonal basis that is otherwise secure; (iii) a building that is
8 secure, but is the subject of a probate action, action to quiet title,
9 or other similar ownership dispute; (iv) a building damaged by a natural
10 disaster and one or more owner intends to repair and reoccupy the prop-
11 erty; or (v) occupied by the mortgagor, a relative of the mortgagor or a
12 tenant lawfully in possession.

13 2. Such [~~plaintiff~~] mortgagee and/or its loan servicing agent shall
14 have the right to peaceably enter upon such property determined to be
15 vacant and abandoned pursuant to subdivision one of this section, or to
16 cause others to peaceably enter upon the property for the limited
17 purpose of inspections, repairs and maintenance as required by this
18 section, or as otherwise ordered by court; provided, however, that if
19 the property is occupied by a tenant lawfully in possession, at least
20 seven days notice must be given to such tenant, unless emergency repairs
21 are required in which case reasonable notice shall be provided to the
22 tenant.

23 2-a. (a) It shall be unlawful for a mortgagee, its servicer or a third
24 party agent or other person acting on behalf of a mortgagee to enter
25 residential real property that is not vacant and abandoned for the
26 purpose of forcing, intimidating, harassing or coercing a lawful occu-
27 pant of such residential property to vacate that property in order to
28 render the property vacant and abandoned, or to otherwise force, intimid-
29 ate, harass, or coerce a lawful occupant of residential real property
30 to vacate that property so that it may be considered as vacant and aban-
31 doned.

32 (b) Liability for such unlawful conduct shall extend to any mortgagee
33 for whose benefit the actions were initiated, in addition to any agent,
34 employee or subcontractor of the mortgagee who retained, hired or other-
35 wise enlisted the perpetrator.

36 (c) A homeowner and/or occupant who has been subjected to such unlaw-
37 ful conduct may bring an action for damages and injunctive relief which
38 may be raised as a counterclaim in a foreclosure or eviction proceeding,
39 or in any other action or proceeding brought to regain possession of, or
40 quiet title to, residential real property, or may be raised as an affir-
41 mative action in any court of competent jurisdiction.

42 (d) Punitive damages, costs and/or attorney fees, may be awarded when
43 the conduct complained of has been carried out with knowing disregard of
44 the rights of the occupant or was part of a pattern of conduct intended
45 to secure the vacating of properties so that those properties would be
46 considered as vacant and abandoned for purposes of this section.

47 3. ~~The~~ In addition to the authority granted to the attorney general
48 pursuant to subdivision three of section thirteen hundred seven-a of
49 this article, the municipality in which such residential real property
50 is located, any tenant lawfully in possession, and a board of managers
51 of a condominium in which the premises are located or a homeowners asso-
52 ciation if said premises are subject to the rules and regulations of
53 such an association, shall have the right to enforce the obligations
54 described in this section in any court of competent jurisdiction after
55 at least seven days notice to the [~~plaintiff in the foreclosure action~~]
56 mortgagee or its loan servicing agent unless emergency repairs are

A. 6932--A

4

1 required. Any entity acting pursuant to this subdivision shall have a
2 cause of action in any court of competent jurisdiction against the
3 ~~[plaintiff in the foreclosure action]~~ mortgagee or its loan servicing
4 agent to recover costs incurred as a result of maintaining the property.
5 Such entity shall provide the attorney general with written notice at
6 least ten days prior to bringing an action pursuant to this subdivision;
7 provided, however, that failure to comply with this notice requirement
8 shall not be a defense to the entity's proceeding. The authority
9 provided by this subdivision shall be in addition to, and shall not be
10 deemed to diminish or reduce, any rights of the parties described in
11 this section under existing law against the mortgagor of such property
12 for failure to maintain such property.

13 4. In the event the mortgagor of the property commences a proceeding
14 in bankruptcy court prior to the completion of the public auction
15 ordered in the judgment of sale, the duties created by this section
16 shall be suspended during the pendency of the bankruptcy proceeding or
17 until such time as an order has been entered in that proceeding lifting
18 or removing the automatic stay of the foreclosure sale.

19 5. For the purposes of this section "maintain" shall mean keeping the
20 subject property in a manner that is consistent with the standards set
21 forth in the New York property maintenance code chapter 3 sections 301,
22 302 (excluding 302.2, 302.6 and 302.9), 304.1, 304.3, 304.7, 304.10,
23 304.12, 304.13, 304.15, 304.16, 307.1, and 308.1; provided, however,
24 that if the property is occupied by a tenant, then such property must
25 also be maintained in a safe and habitable condition.

26 6. A ~~(plaintiff)~~ mortgagee or its loan servicing agent shall be
27 relieved of its responsibilities ~~[to maintain the residential real prop-~~
28 ~~erty that is the subject of a foreclosure action]~~ under paragraph (a) of
29 subdivision one of this section for the period that a receiver of such
30 property is serving.

31 7. Nothing contained in this section shall diminish in any way the
32 obligations pursuant to any state or local law of the mortgagor of the
33 property or a receiver of rents and profits appointed in an action to
34 foreclose a mortgage to maintain the property prior to the closing of
35 title pursuant to a foreclosure sale.

36 8. This section shall not preempt, reduce or limit any rights or obli-
37 gations imposed by any local laws with respect to property maintenance
38 and the locality's ability to enforce those laws.

39 § 3. The real property actions and proceedings law is amended by
40 adding a new section 1307-a to read as follows:

41 § 1307-a. Delinquent mortgage; vacant and abandoned property; state-
42 wide vacant and abandoned property electronic registry. 1. Where a
43 mortgagor is three monthly payments past due on a mortgage loan secured
44 by residential real property, the mortgagee or its loan servicing agent
45 shall provide written notice to the mortgagor stating that the mortgagor
46 has the right to occupy the property until he or she is ordered to leave
47 the property by a court of competent jurisdiction. Such notice shall be
48 provided to the mortgagor within fifteen days of the date that the home-
49 owner's account is past due by ninety days, and a copy of such notice
50 shall promptly be provided by such mortgagee or loan servicing agent to
51 the attorney general. The notice shall be in fourteen-point font and
52 shall include the following language in a clear and conspicuous format:

53 "As your loan servicer or mortgage holder, we are required to send you
54 this notice pursuant to New York state law.

A. 6932--A

5

1 As the owner of your home, you have the right to occupy your home
2 until such time as you are ordered to leave by a court of competent
3 jurisdiction.

4 We may initiate collection activity including taking steps to commence
5 and litigate a foreclosure lawsuit against you and the property.

6 You are allowed by New York state law to continue living in your home
7 regardless of any collection methods we pursue or oral or written state-
8 ments made during the collections process, including the foreclosure
9 process, until such time as you are ordered by a court to leave your
10 property."

11 2. (a) The attorney general shall maintain a statewide vacant and
12 abandoned property registry in the form of an electronic database. The
13 attorney general may, in accordance with the applicable provisions of
14 the state finance law, retain a private contractor to administer such
15 database for the purposes of satisfying this requirement, and shall,
16 upon written request, provide appropriate officials of any county, city,
17 town or village with direct electronic access to information maintained
18 on such database for the purpose of enforcing this section, section
19 thirteen hundred seven of this article or article nineteen-A of this
20 chapter, or any other related law, code, rule, regulation or ordinance.

21 (b) A mortgagee or its agent shall submit to the attorney general
22 information required by the attorney general about any vacant and aban-
23 doned residential real property, as that term is defined in paragraph
24 (b) of subdivision one of section thirteen hundred seven of this arti-
25 cle, within fifteen days of when the mortgagee or its agents learn, or
26 reasonably should have learned, that such property is vacant and aban-
27 doned. Such information shall, at a minimum, include: (i) the current
28 name, address and contact information for the lender or servicer respon-
29 sible for maintaining the vacant property; (ii) whether a foreclosure
30 action has been filed for the property in question, and, if so, the date
31 on which the foreclosure action was commenced; and (iii) the last known
32 address and contact information for the mortgagee of record.

33 (c) Where any of the information contained in a mortgagee's or its
34 agent's initial submission to the registry has materially changed since
35 such submission, such mortgagee or agent shall make an amended
36 submission to the registry not later than thirty days after the mortga-
37 gee or its agents learn, or reasonably should have learned, of the new
38 or changed information.

39 (d) The attorney general is authorized and empowered to adopt such
40 rules and regulations as may in the judgment of the attorney general be
41 necessary for the effective administration and operation of such regis-
42 try, including but not limited to rules and regulations governing access
43 to the registry and specifying the manner and frequency of registration
44 and the information that must be provided. The attorney general may
45 amend such regulations from time to time as necessary to effectuate the
46 purpose of this section and section thirteen hundred seven of this arti-
47 cle.

48 (d-1) The attorney general shall take such measures as he or she deems
49 appropriate to ensure that the Federal National Mortgage Association or
50 the Federal Home Loan Mortgage Association, as applicable, is promptly
51 notified in writing, which may include notification by email or other
52 electronic means, when residential real property with respect to which
53 either such association is the mortgagee, servicer or insurer, is added
54 to the registry.

55 (e) The attorney general shall establish and maintain a toll-free
56 hotline that neighbors of real property that is, or appears to be,

A. 6932--A

6

1 vacant and abandoned residential real property, as such term is defined
2 in paragraph (b) of subdivision one of section thirteen hundred seven of
3 this article, and other community residents can use to report to the
4 attorney general any hazards, blight or other concerns related to such
5 property and to obtain publicly available information concerning the
6 status of such property. Such publicly available information shall
7 include but not be limited to whether such property is currently listed
8 on the statewide vacant and abandoned property registry established
9 pursuant to this subdivision, and the identity of the mortgagee or loan
10 servicing company responsible for maintaining such vacant and abandoned
11 property pursuant to subdivision one of this section. The office of the
12 attorney general shall include on its official public website informa-
13 tion about such toll-free hotline.

14 3. (a) Whenever a mortgagee or agent of a mortgagee shall violate this
15 section or section thirteen hundred seven of this article, an applica-
16 tion may be made by the attorney general in the name of the people of
17 the state of New York to a court or justice having jurisdiction by a
18 special proceeding to issue an injunction, and upon notice to the
19 defendant of not less than five days, to enjoin or restrain the contin-
20 uance of such violation; and if it shall appear to the satisfaction of
21 the court or justice that the defendant has, in fact, violated this
22 section or section thirteen hundred seven of this article, an injunction
23 may be issued by such court or justice, enjoining and restraining any
24 further violation, without requiring proof that any person has, in fact,
25 been injured or damaged thereby. In connection with any such proposed
26 application, the attorney general is authorized to take proof and make a
27 determination of the relevant facts and to issue subpoenas in accordance
28 with the civil practice law and rules.

29 (b) In addition to, or in lieu of, the relief authorized in paragraphs
30 (a) and (c) of this subdivision, a municipality where the residential
31 real property is located may intervene as a matter of right in any fore-
32 closure action commenced under this article for the purposes of request-
33 ing injunctive relief to assure that the property in question is main-
34 tained in accordance with all ordinances, codes, regulations and
35 statutes and that the foreclosure action is timely prosecuted. The
36 intervenor may move to have any adjournments or voluntary discontin-
37 uances in such foreclosure action conditioned upon the posting of a bond
38 or other undertaking or to order other measures intended to ensure ongo-
39 ing maintenance of the property until such time as title to the property
40 has been transferred through a foreclosure sale or otherwise. Inter-
41 vention in a foreclosure action pursuant to this paragraph shall be
42 available with respect to any residential property secured by a mortgage
43 loan as defined under section thirteen hundred five of this article,
44 regardless of whether the property is occupied, so long as one of the
45 other conditions described in paragraph (b) of subdivision one of
46 section thirteen hundred seven of this article is present.

47 (c) Whenever the court shall determine that a violation of this
48 section or section thirteen hundred seven of this article by a mortgagee
49 or agent of a mortgagee has occurred, the court may impose a civil
50 penalty of up to one thousand dollars per day for each day the violation
51 persisted in addition to the costs of maintaining the property. Notwith-
52 standing any provision of law to the contrary, all civil penalties
53 collected by the attorney general pursuant to this paragraph shall be
54 deposited to the credit of the abandoned property neighborhood relief
55 fund established pursuant to section ninety-one-g of the state finance
56 law.

A. 6932--A

7

1 (d) The provisions of this section may also be enforced by any locali-
2 ty or municipality in which the vacant property is located, provided
3 that the locality or municipality provides the attorney general with
4 written notice at least ten days prior to commencing such an action
5 under this section; and provided further that failure to comply with
6 this notice requirement shall not be a defense to the locality's or
7 municipality's proceeding. Any civil penalty imposed pursuant to para-
8 graph (c) of this subdivision in an action brought by a municipality
9 pursuant to this paragraph shall be retained by such municipality.

10 4. This section shall not preempt, reduce or limit any rights or obli-
11 gations imposed by any local law with respect to property maintenance
12 and the locality's ability to enforce those laws.

13 § 4. A part of the supreme court shall be devoted to foreclosure
14 actions involving property alleged to be vacant and abandoned.

15 § 5. The real property actions and proceedings law is amended by
16 adding a new section 1308 to read as follows:

17 § 1308. Special foreclosure proceeding for vacant and abandoned resi-
18 dential real property. 1. In any foreclosure action involving residen-
19 tial real property, as defined in section thirteen hundred five of this
20 article, alleged to be vacant and abandoned, the plaintiff may make an
21 application for an order to show cause upon notice which seeks entry of
22 judgment of foreclosure and sale on the grounds that such property is
23 vacant and abandoned. Any such application shall be made via order to
24 show cause, wherein the court shall direct service consistent with
25 section three hundred eight of the civil practice law and rules. No such
26 application shall be directed to be served upon defendant until the time
27 to answer the complaint in such action shall have expired, nor shall any
28 such application be granted until after the mandatory settlement confer-
29 ence pursuant to rule three thousand four hundred eight of the civil
30 practice law and rules has been noticed to any such defendant, and after
31 all such defendants have failed to appear for said conference. Such
32 application shall:

33 (a) state on the face of the order to show cause that "This order to
34 show cause seeks entry of a judgment of foreclosure and sale pursuant to
35 Real Property Actions and Proceedings Law § 1308 on the ground that the
36 mortgaged premises are vacant and abandoned";

37 (b) set forth the allegations evidencing vacant and abandoned residen-
38 tial property as provided for under subdivision four of this section and
39 attach documentary evidence in support;

40 (c) state within the affidavit or affirmation supporting the applica-
41 tion the sums alleged to be due and owing upon the subject mortgage
42 documents and attach documentary evidence in support, including but not
43 limited to proof of ownership of the mortgage and the note; and

44 (d) state within the affidavit or affirmation supporting the applica-
45 tion that an immediate order of reference is sought for the appointment
46 of a referee to compute pursuant to this chapter.

47 2. The chief administrative judge of the courts shall adopt such rules
48 as he or she deems necessary to expeditiously implement the provisions
49 of this subdivision.

50 3. The court shall take the evidence supporting the facts and circum-
51 stances stated in the order to show cause and shall examine the plain-
52 tiff or his or her agent, at an evidentiary hearing under oath, as to
53 the evidence presented with respect to vacant and abandoned property,
54 and shall make a written finding whether the property to be foreclosed
55 upon pursuant to this section meets the definition of vacant and aban-
56 doned pursuant to subdivision four of this section and shall set forth

A. 6932--A

8

1 with specificity the factors met under such section. Evidence to be
2 submitted to the court shall include utility company records evidencing
3 the abandoned status of the premises. Written findings shall include
4 evidence that the plaintiff is the owner and holder of the subject mort-
5 gage and note, or has been delegated the authority to institute a mort-
6 gage foreclosure action by the owner of same.

7 4. (a) As used in this section, "vacant and abandoned" residential
8 real property means residential real property, as defined in section
9 thirteen hundred five of this article, with respect to which the mortga-
10 gee proves to the satisfaction of the court that the mortgaged property
11 is not occupied by a mortgagor or tenant as defined in section thirteen
12 hundred five of this article, and:

13 (1) the property is a risk to the health, safety, or welfare of the
14 public, or any adjoining or adjacent property owners, due to acts of
15 vandalism, loitering, criminal conduct, or physical destruction or dete-
16 rioration of the property; or

17 (2) the relevant governmental authority has declared the property
18 unfit for occupancy and to remain vacant and unoccupied or to be demol-
19 ished.

20 (b) For purposes of this section, residential real property shall not
21 be considered "vacant and abandoned" if the property is a building
22 described in subparagraph (i), (ii), (iii) or (iv) of paragraph (b-3) of
23 subdivision one of section thirteen hundred seven of this article, or is
24 occupied as described in subparagraph (v) of such paragraph.

25 5. (a) A judgment of foreclosure and sale shall not be entered pursu-
26 ant to this section if the mortgagor or any other defendant has filed an
27 answer, appearance or other written objection that is not withdrawn.

28 (b) The court's denial of a judgment of foreclosure and sale pursuant
29 to this section where the court does not find that the mortgaged proper-
30 ty is vacant and abandoned shall not be on the merits.

31 (c) The provisions of this section shall not preempt, reduce or limit
32 any rights or obligations imposed by any local laws with respect to
33 property maintenance or a locality's ability to enforce such laws.

34 (d) The provisions of this section shall not abrogate any rights or
35 duties pursuant to this article.

36 § 6. The state finance law is amended by adding a new section 91-g to
37 read as follows:

38 § 91-g. Abandoned property neighborhood relief fund; enforcement
39 assistance grants. 1. There is hereby established in the custody of the
40 state comptroller a special fund to be known as the "abandoned property
41 neighborhood relief fund."

42 2. Such fund shall consist of all civil penalties collected by the
43 attorney general pursuant to paragraph (c) of subdivision three of
44 section thirteen hundred seven-a of the real property actions and
45 proceedings law and required to be deposited into this fund, and all
46 other moneys credited or transferred thereto from any other fund or
47 source pursuant to law. Any income earned on moneys within the abandoned
48 property neighborhood relief fund shall be added to and made available
49 for the purpose of such fund.

50 3. Monies of the fund shall be allocated to and expended by the attor-
51 ney general, on the audit and warrant of the state comptroller, only for
52 the purpose of providing abandoned property enforcement assistance
53 grants to localities in accordance with subdivisions four, five and six
54 of this section.

55 4. The chief elected official of a county, city, town or village
56 located within the state may, on an annual basis, submit a written

A. 6932--A

9

1 application to the attorney general, or his or her authorized designee,
2 for an abandoned property enforcement assistance grant from available
3 moneys in the abandoned property neighborhood relief fund established
4 pursuant to subdivision one of this section. The attorney general shall
5 require that applications submitted pursuant to this subdivision provide
6 such information as the attorney general deems appropriate, including,
7 at a minimum, the following:

8 (a) The amount of funding sought;

9 (b) A detailed description of the impact that the presence of vacant
10 and abandoned residential real properties in the requesting locality has
11 had on its affected communities, the locality's efforts to address the
12 problem to date and the result of those efforts;

13 (c) A detailed description of the enforcement purpose or purposes to
14 which the funding will be applied, with specific reference to the
15 provision or provisions of sections thirteen hundred seven and thirteen
16 hundred seven-a of the real property actions and proceedings law sought
17 to be enforced; and

18 (d) The date and result of any prior applications made by the locality
19 to the attorney general pursuant to this section.

20 5. In determining whether to approve an application submitted pursuant
21 to subdivision four of this section, the attorney general shall, at a
22 minimum, consider:

23 (a) The extent to which the presence of vacant and abandoned residen-
24 tial properties in the requesting locality has negatively impacted the
25 communities where those properties are located and the locality as a
26 whole;

27 (b) The likely impact approval of the application and disbursement of
28 funds would have on addressing the problem of vacant and abandoned resi-
29 dential properties in the requesting locality through enhanced enforce-
30 ment of sections thirteen hundred seven and thirteen hundred seven-a of
31 the real property actions and proceedings law;

32 (c) The availability of other sources of funding to pay some or all of
33 the enforcement costs for which the requesting locality seeks funding;
34 and

35 (d) Where the requesting locality previously applied for and received
36 an enforcement assistance grant pursuant to this section, whether the
37 grant funds were used by the locality in accordance with the provisions
38 of this section and any applicable rules or regulations adopted by the
39 attorney general.

40 6. Upon approval of an application, the attorney general may authorize
41 disbursement of funds in any amount up to the amount sought by the
42 requesting locality. Such disbursement may be by advance payment to the
43 locality before it incurs the cost for which its application sought
44 funding, by reimbursement to the locality after it incurs and pays such
45 costs in the first instance, or by some combination thereof, as the
46 attorney general determines is appropriate under the circumstances. Any
47 and all enforcement assistance grant moneys disbursed pursuant to this
48 section shall be used by the recipient county, city, town or village
49 solely to aid in the enforcement by such locality of sections thirteen
50 hundred seven and thirteen hundred seven-a of the real property actions
51 and proceedings law.

52 7. The attorney general shall adopt such rules and regulations as he
53 or she deems appropriate to effectuate the purposes of this section,
54 including provisions for periodic monitoring and evaluation of the
55 enforcement assistance grant program established herein.

A. 6932--A

10

1 8. The state comptroller shall have the power to inspect, examine and
2 audit the fiscal affairs of any locality awarded an enforcement assist-
3 ance grant pursuant to this section to the extent necessary to determine
4 whether the funding received has been used in accordance with the
5 purpose or purposes for which it was sought in the application, and
6 whether there has been compliance with the applicable provisions of this
7 section and any applicable rules or regulations adopted by the attorney
8 general.

9 9. The attorney general, in consultation with the state comptroller,
10 shall report annually to the governor and the legislature regarding the
11 operation and success of such grant program.

12 § 7. This act shall take effect on the ninetieth day after it shall
13 have become a law; provided, however, that effective immediately, the
14 addition and/or repeal of any rule or regulation necessary for the
15 implementation of this act on its effective date is authorized and
16 directed to be made and completed on or before such effective date.



VILLAGE OF
PORT CHESTER
222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Discussion Item

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required		x
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title
(Will appear as indicated below on Agenda)

Discussion of the Future of the Amnesty Program

Summary

Background:

Trustee Ceccarelli has requested discussion of the future of the amnesty program which expired on June 30, 2016.

Proposed Action

Discuss.

Attachments



VILLAGE OF
PORT CHESTER

222 Grace Church Street, Port Chester, New York 10573

AGENDA MEMO

Office of the Village Attorney

Village BOT Meeting Date: 7/5/2016

Item Type: Resolution

Description	Yes	No	Description	Yes	No
Fiscal Impact		x	Public Hearing Required	x	
Funding Source:			BID #		
			Strategic Plan Priority Area		
			N/A		
Agreement		x	Manager Priorities		
Strategic Plan Related		x	N/A		

Agenda Heading Title

(Will appear as indicated below on Agenda)

Resolution to Set a Public Hearing to Consider a Local Law Amending the Village Code.
with regard to Public Officers

Summary

Background:

New York State law makes a distinction between positions that are public officers and public employees. The distinction between the two is not always clear, but the duties of a public officer involve some exercise of sovereign power and vested with discretion as to how he/she performs his/her duties.

The Board may recall that the Mayor raised the issue as to the residency of code enforcement personnel.

This office sought an opinion from the New York Attorney General. The Assistant Solicitor General in Charge of Opinions has most recently provided several opinions that relate to the matter.

In order to err on the side of caution, the Board is presented a draft local law with regard to the residency requirements for public officers. The local law enables individuals who are public officers to reside outside of the Village, but within the State of New York.

Proposed Action

Hold the public hearing.

Attachments

Proposed Draft Local Law

RESOLUTION

SETTING A PUBLIC HEARING TO CONSIDER THE ADVISABILITY OF ADOPTING A LOCAL LAW AMENDING THE VILLAGE CODE WITH REGARD TO THE RESIDENCY OF PUBLIC OFFICERS

On motion of TRUSTEE _____, seconded by TRUSTEE _____

, the following resolution was adopted by the Board of Trustees of the Village of Port Chester, New York:

RESOLVED, that the Board of Trustees hereby sets a public hearing on July ____, 2016 at 7:00 p.m., or as soon thereafter, at the Port Chester Justice Court Courtroom, 350 North Main Street, Port Chester to consider the advisability of adopting a local law amending the Code of the Village of Port Chester with regard to the residency of public officers.

Approved as to Form:

Anthony M. Cerreto, Village Attorney

Village of Port Chester, New York

Local Law No. I_____ of the Year 2016

Be it enacted by the Board of Trustees of the Village of Port Chester, New York:

A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER WITH
REGARD TO THE RESIDENCY OF PUBLIC OFFICERS

SECTION 1: Purpose and Intent

Although the Board of Trustees recognizes the value of Village residency, it appreciates the desires to assure the recruitment and retention of those with the highest qualifications to be employed in service to the Village.

SECTION 2:

The Code of the Village of Port Chester is hereby amended by adding a new chapter, Chapter 95, previously reserved, to be entitled “Public Officers”, to read as follows:

Section 95-1 Residency Requirements

With respect to public officers employed by the Village of Port Chester, the provisions of Public Officers Law, Sections 3 and 30, Village Law, Section 3-300, requiring a person to be a resident of the political subdivision or municipal corporation of the state for which he or she shall be chosen or within his or her official functions are required to be exercise shall not prevent a person from holding any appointed public office of employment, provided that such person resides in the state of New York.

SECTION 3: Supersession

The Board hereby exercises its authority pursuant to State Municipal Home Rule Law, Sections 10(1)(ii)(a)(1) and/or Section 10(1)(ii)(e), to supersede the residency restrictions contained in Public Officers Law, Sections 3 and 30 and Village Law, Section 3-300.

SECTION 4: Severability

If any provision of this local law is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all such provisions shall continue in full force and effect.

SECTION 5: Effective Date

This local law shall be effective immediately upon filing with the Secretary of State.

Che Things.LLC

1815 Palmer Avenue
Larchmont, NY 10538
914-980-0638

June 14, 2016

Hon. Dennis Pilla and Board of Trustees
Village of Port Chester
222 Grace Church Street
Port Chester, NY 10573

RE: Proposal for an Outdoor Food Festival

Dear Mayor and Board of Trustees:

I would like to propose an outdoor food festival and craft market of 52 booths that would be a showcase for local restaurants, food entrepreneurs, and craft people. The festival would mix new and innovative with old and traditional foods. Emphasis would be on artisanal products and local crafts of all types to create a market that relates to a vibrant and established community as well as one that is growing with opened minded direction and ideas.

Each vendor would offer a unique food item or craft. If there are more than one ethnic food type we would limit each vendor to one or 2 types of food item that wouldn't conflict with another vendor.

In order for such an event to happen, the following elements are necessary:

- Outdoor space of approximately 10,000 sq. ft., with access to significant parking in the immediate area.
- Approval from the Fire Dept. to allow use of propane powered cooking, as well as possible electrical power of 200 amps total for distribution of 20 amps 220v to 8 booths.
- Provision for garbage disposal including separation containers for recyclables and trash throughout the venue.
- Provision for 2 portable toilet and 2 hand wash facilities for customers and staff and vendors.
- All vendors will be required to get a temporary health permit from the Health Dept. and all other required Departments. We would need a list of your local requirements.
- Vendors would be required to indemnify the Village, property owners, and Che Productions of any and all liability – usually \$1,000,000 + \$2,000,000.

- All vendors will supply their own tables, chairs and equipment to run their operation. They are responsible for building and breaking down of booths and equipment.
- Booth pricing would be 10x10 \$225.00, 5x5 \$150.00, with a discount for local business.
- Hours of operation will be from 10am till 6pm Saturday and Sunday, rain or shine.
- Payment would be 3 weeks in advance of day of event is required to secure the space.

In terms of the actual outdoor space, I believe there are three areas that could work:

- Train Station Parking Lot
- Waterfront Parking Lot
- Lot across from Capitol Theater

In order to show how such an event will thrive in Port Chester, I would like to propose a singular event for 2016, either September 12 or 19, 2016. Should it be successful, and I believe it will be, a consistent weekend event could be organized for the 2017 season, from May through September.

I look forward to your response and working with the Village on this exciting project.

Thank You,
Mark Merker
Che Things.LLC



CORR - 02
BOT 7-5-2016

Fire Department

Received
JUN 22 2016
M. J. G. G. G.
VILLAGE OF PORT CHESTER

Harry Howard Hook &
Ladder No. 1
Fire Police No. 1
Mellor Hose No. 1
Washington Engine & Hose
No. 4
Brooksville Hose No. 5

Village of Port Chester

WESTCHESTER COUNTY, N. Y.



Headquarters: Westchester Avenue and Ponings Street

Companies:

Reliance Chemical & Hose
No. 1

Putnam Steamer & Hose
No. 2

TO THE HONORABLE BOARD OF TRUSTEES OF THE VILLAGE PORT CHESTER, N. Y.:

The Fire Patrol Reserve Co. respectfully reports that at a meeting held on June 7, 2016 favorable action was taken on the following:

Elected active members.....

Elected honorary members.....

Members resigned..... *Virella, Heriberto*.....

Members expelled.....

Members suspended.....

Members died.....

Badges returned (numbers).....

Remarks.....

[Handwritten Signature]
Secretary.



Companies:

Reliance Chemical & Hose
No. 1

Putnam Steamer & Hose
No. 2

Fire Department
Village of Port Chester

WESTCHESTER COUNTY, N. Y.



Headquarters: Westchester Avenue and Boning Street

Received

JUN 22 2016

VILLAGE OF PORT CHESTER

Harry Howard Hook &
Ladder No. 1

Fire Police No. 1

Mellor Hose No. 1

Washington Engine & Hose
No. 4

Brooksville Hose No. 5

TO THE HONORABLE BOARD OF TRUSTEES OF THE VILLAGE PORT CHESTER, N. Y.:

The Fire Patrol & Rescue Co. 1 respectfully reports that at a meeting held on June 7, 2016 favorable action was taken on the following:

Elected active members.....

Elected honorary members.....

Members resigned SALON, ANTONIO.....

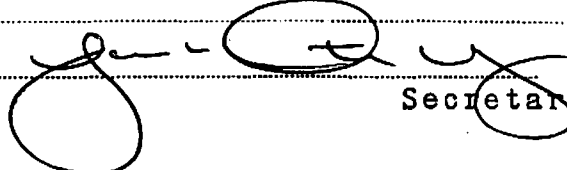
Members expelled.....

Members suspended.....

Members died.....

Badges returned (numbers).....

Remarks.....


Secretary.



Companies:

Reliance Chemical & Hose
No. 1

Putnam Steamer & Hose
No. 2

Fire Department

Village of Port Chester
VILLAGE CLERK
VILLAGE OF PORT CHESTER

WESTCHESTER COUNTY, N. Y.



Headquarters: Westchester Avenue and Honings Street

Received

JUN 22 2016

Harry Howard Hook &
Ladder No. 1

Fire Police No. 1

Mellor Hose No. 1

Washington Engine & Hose
No. 4

Brooksville Hose No. 5

TO THE HONORABLE BOARD OF TRUSTEES OF THE VILLAGE PORT CHESTER, N. Y.:

The Fire Patrol & Rescue Co. #1 respectfully reports that at a meeting held on June 7, 2016 favorable action was taken on the following:

Elected active members.....

Elected honorary members.....

Members resigned Green, Jason.....

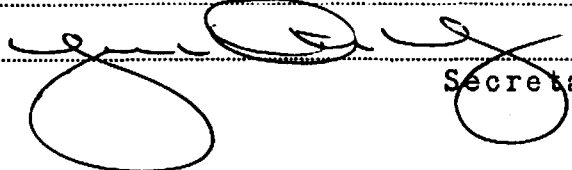
Members expelled.....

Members suspended.....

Members died.....

Badges returned (numbers).....

Remarks.....


Secretary.



Companies:

Reliance Chemical & Hose
No. 1

Putnam Steamer & Hose
No. 2

Fire Department

Village of Port Chester

WESTCHESTER COUNTY, N. Y.



Headquarters: Westchester Avenue and Downing Street

Received

JUN 22 2016

Village Clerk
VILLAGE OF PORT CHESTER

Harry Howard Hook &
Ladder No. 1

Fire Police No. 1

Mellor Hose No. 1

Washington Engine & Hose
No. 4

Brookville Hose No. 5

TO THE HONORABLE BOARD OF TRUSTEES OF THE VILLAGE PORT CHESTER, N. Y.:

The Fire Patrol & Rescue Co. respectfully reports that at a meeting held on June 7, 2016 favorable action was taken on the following:

Elected active members.....

Elected honorary members.....

Members resigned Giordano, John.....

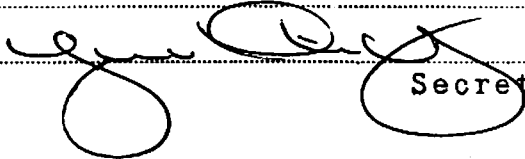
Members expelled.....

Members suspended.....

Members died.....

Badges returned (numbers).....

Remarks.....


Secretary.