

OFFICE OF THE SUPERVISOR

Telephone
(914) 277-3637
Fax
(914) 276-0082

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

RICK MORRISSEY
SUPERVISOR



**SOMERS TOWN BOARD
WORK SESSION/REGULAR MEETING - 7:00PM
THURSDAY, AUGUST 13, 2020
www.somersny.com**

I. PLEDGE OF ALLEGIANCE:

7:00pm Work Session / Regular Meeting

II. ROLL CALL:

III. PUBLIC HEARINGS (Via Remote Access):

PUBLIC COMMENT

Please limit your comments to no more than 3 minutes.

IV. APPROVAL OF MINUTES:

V. DEPARTMENT REPORTS: The Town Clerk announces receipt of the following monthly reports: Town Clerk, Building Inspector, Zoning Board of Appeals, Plumbing, Bureau of Fire Prevention, Parks & Recreation, Planning & Engineering, Tax Receiver, Director of Finance and Department Heads

SOMERS TOWN BOARD
WORK SESSION/REGULAR MEETING - 7:00PM
THURSDAY, AUGUST 13, 2020
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VI. BUSINESS OF THE BOARD:

A. PARKS & RECREATION: No additional business.

B. TOWN BOARD:

1. Town of Somers Covid-19 – Update
2. Somers School District Update – Dr. Raymond Blanch
3. Highview Court Project on Rte. 100 and Highview Terrace - Presentation – Mr. Rick DiNardo
4. Town Board Special Meeting on August 20, 2020 at Reis Park for the continuation of SSD-2 Public Hearing – Announcement
5. Name of Private Road in Hidden Meadows – Discussion
6. Telecommunications Task Force – Discussion
7. Rescind Local Laws - Discussion with regard to the Bureau of Fire Prevention and schedule a Public Hearing for September 10, 2020.
8. Authorize the Supervisor to execute the CAI Technologies Contract for an annual GIS Internet Services Maintenance Agreement for the period October 1, 2020 through September 30, 2021 with the Town of Somers, in the amount of \$2,400 subject to automatic renewals per email from Teresa Stegner, Assessor, dated July 23, 2020.
9. Authorize the Deputy Supervisor to execute the Community Choice Aggregation MOA with Sustainable Westchester, Inc. and the ESA in due course, pending further review by the Town's Attorney.
10. Authorize the re-solicitation of Request for Proposals from companies that can provide a contract to furnish and deliver oil, as well as for emergency and non-emergency services, including maintenance for HVAC per memo dated July 15, 2020 from Thomas J. Tooma, Building Inspector.

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C. **FINANCIAL:** No additional business.

D. **HIGHWAY:** No additional business.

E. **PERSONNEL:**

1. **Current Vacancies:**

- a. Affordable Housing Board (2- 2-year terms ending 7/11/2021.)
- b. Affordable Housing Board (3 - 2-year terms ending 7/11/2022.)
- c. Library Board of Trustees (1- 4-year term ending 12/31/2023.)
- d. Partners in Prevention (3 – 3-year terms ending 12/31/2020.)
- e. Partners in Prevention (2 – 3-year terms ending 12/31/2022.)

2. **Upcoming Vacancies - Terms Expiring in 2020:**

- a. Assessment Board of Review (1- 5-year term ending 9/30/2020.)
3. Authorize the reappointment of Ms. Ellen Devey to the Somers Affordable Housing Board to a two-year term ending July 11, 2022.
4. Authorize the reappointment of Mr. Richard Auerbach to the Somers Affordable Housing Board to a two-year term ending July 11, 2022.

F. **PLANNING & ENGINEERING:** No additional business.

G. **POLICE:** - No additional business.

H. **CONSENSUS AGENDA:**

1. Authorize the Supervisor to execute the following:
 - a. The Tri-Town Nutrition Program Agreement for the period January 1, 2019 through December 31, 2019 between the Town of Somers, North Salem, and Lewisboro per memo dated July 15, 2020 from Barbara Taberer, Nutrition Program Director.
 - b. The 2020/2021 School Tax Warrant.

SOMERS TOWN BOARD
WORK SESSION/REGULAR MEETING - 7:00PM
THURSDAY, AUGUST 13, 2020
www.somersny.com

2020 Calendar

August 13, 2020	7:00pm	Town Board Work Session / Regular Meeting
August 20, 2020	7:00pm	Town Board Special Meeting Public Hearing (Continuation): Somers Sewer District #2 at Reis Park.
September 3, 2020	7:00pm	Town Board Work Session
September 10, 2020	7:00pm	Town Board Regular Meeting
October 1, 2020	7:00pm	Town Board Work Session
October 8, 2020	7:00pm	Town Board Regular Meeting

8/6/2020 1:50 PM

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Sent to:
RB, TR, TC 8/3/2020 KD

Rick Morrissey

From: ENRICO DINARDO <enrico@londonderrygroup.net>
Sent: Monday, August 3, 2020 12:35 PM
To: Rick Morrissey
Cc: ENRICO DINARDO
Subject: Highview Court
Attachments: 259 3-2 Comparison.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Supervisor Morrissey,

Attached please find our most recent revision for Highview Court at 259 Route 100 as well as a summary of events. Based on your suggestion, we "socialized" the project with the adjoining neighbors of Highview Terrace and Annarock Drive. We hand delivered invitations to every home on Highview Terrace, Annarock Drive and the adjacent homes on Route 100.

We held a series of three meetings with the neighbors to present the project and obtain their input, comments and concerns.

The first meeting was held on June 13, 2020 on the site and in addition to presenting the project, we staked the buildings so as to give everyone a better perception of the project. 19 neighbors attended the first meeting. The neighbors clearly expressed their concerns, objections, and preferences. Their primary concerns included density, size and mass, traffic, water levels, ssds, access and excessive clearing of natural vegetation.

Working with the neighbors over the next two meetings we attempted to address as many of their concerns as possible. In addition to our presentations and info, we brought in our contractors and engineer to help address all questions. Our revised proposal reduced the overall project by 33.3% and the commercial space by 100%. We accomplished this by removing one building.

We came to the following mutual agreement with the neighbors. Assuming that we are able to successfully address all their water, septic, traffic, and design concerns they would most likely be comfortable with the revised project. We also offered the group the opportunity to have 1 or 2 members as liasons to the project so that they can be as current as possible with all updates.

Thank you for the opportunity to further discuss this with you and the town board. We look forward to making our presentation.

Best,
Rick

Enrico DiNardo
Highview Court
Londonderry Group, Inc
www.londonderrygroup.net

>

HIGHVIEW COURT
Comparison - Plan #1 vs Plan #2

PLAN #1 - 3 Buildings



PLAN #2 - 2 Buildings



HIGHVIEW COURT

Comparison - Plan #1 vs Plan #2

PLAN #1 – 3 Buildings



PLAN #2 – 2 Buildings



HIGHVIEW COURT

Comparison - Plan #1 vs Plan #2

PLAN #1 - 3 Buildings



HIGHVIEW COURT

Comparison - Plan #1 vs Plan #2

PLAN #2 - 2 Buildings



HIGHVIEW COURT

Comparison - Plan #1 vs Plan #2

	<u>Plan #1</u>	<u>Plan #2</u>	<u>Project Reduction</u>
Buildings	3	2	33.3 % Reduction
1 Bedroom Units	18	18	n/c
2 Bedroom Units	6	6	n/c
Office Space	10,000 sf	0 sf	100% Reduction

- A multi-family residential project.
- Two mixed use, 2 ½ story, elevator buildings
- Building Dimension Standards (per building):
 - 40' x90' Footprint = 3,600 sf/building
 - 3 occupied floors/building @ 3,600/floor = 10,800 sf /building
 - Total Site Area: 2.279 acres = 99,273.4 sf

Sent to:
TA, TA, TC 7/29/2020
KD

Kim DeLucia

From: Ken Kearney <kkearney@kearneyrealtygroup.com>
Sent: Wednesday, July 29, 2020 11:38 AM
To: Kim DeLucia
Cc: Rick Morrissey
Subject: Re: Hidden Meadow Road name

Kim,
As usual you are correct.
Muscott River Road.
Thanks

On Wed, Jul 29, 2020 at 11:19 AM Kim DeLucia <kdelucia@somersny.com> wrote:

Good morning Ken,

Can you confirm the spelling of the proposed rod name?

Muscott River Road

Is it supposed to be Muscott River Road?

Thanks,

Kim

Kim DeLucia

Executive Assistant to

Rick Morrissey, Town Supervisor

TOWN OF SOMERS

335 ROUTE 202

SOMERS, NY 10589

Phone: 914-277-3637

Fax: 914-276-0082

WWW.SOMERSNY.COM

From: Ken Kearney <kkearney@kearneyrealtygroup.com>

Sent: Monday, July 20, 2020 2:08 PM

To: Rick Morrissey <supervisor@somersny.com>; Kim DeLucia <kdelucia@somersny.com>

Subject: Hidden Meadow Road name

Supervisor Morrissey,

We respectfully request to name the road at Hidden Meadow which enters HM from Rt. 6 to:
Muscott River Road.

Please let me know if you need anything further.

Thanks

--

Ken Kearney

Kearney Realty & Development Group

P.O. Box 925

Baldwin Place, New York 10505

Phone: (914) 306-7705

Fax: (914) 306-7707

Email: KKearney@KearneyRealtyGroup.com

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Ken Kearney

Kearney Realty & Development Group

P.O. Box 925

Baldwin Place, New York 10505

Phone: (914) 306-7705

Fax: (914) 306-7707

Email: KKearney@KearneyRealtyGroup.com

Telephone
(914) 277-3539

FAX
(914) 277-3790

Thomas J. Tooma, Jr.
Building Inspector

*Sent to:
TB, TA, TC
8/3/2020
KD*

BUILDING DEPARTMENT
Town of Somers
WESTCHESTER COUNTY, N.Y.

**TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589**



MEMO TO: Town Board

FROM: Thomas J. Tooma, Jr.
Building Inspector

RE: Rescinding of Past Local Laws

DATE: July 30, 2020

Please be advised of the existence of previously approved Local Laws - Local Law No. 1 of 1975 (BOCA Basic Fire Prevention Code/1975), Local Law No.1 of 1985, and Local Law No. 2 of 1977 also referenced on the Department of State, Division of Building Standards & Codes website (see attached).

I have compared the previously approved to the current (2020 Fire Code of New York State effective May of 2020) and concluded that the previously approved is less restrictive, therefore render it obsolete and request that the Town Board rescind these three Local Laws.

Please note the discrepancy between what the State has listed and what the Town has listed, as well as the omission of Local Law No. 2 of 1977 from the Town code.

TT/ds

attachments

This list is compiled from responses to a questionnaire that was sent to local governments in 1995. Listed below are local laws or ordinances that have been reported to the Code Council as imposing higher or more restrictive standards, and have been adopted by the Code Council in whole or in part.

Note: The asterisk * denotes that the local government approved the local law or ordinance prior to January 1, 1984, and subsequently the State Fire Prevention and Building Code Council approved such adoption as a higher or more restrictive local standard.

More Restrictive Local Standards

Jurisdiction	Local Law #'s or Ordinance(s)	Subject of MRLS
Albany, City of	Ordinance #2.22.95 of 1995 Ordinance #123.111.89 of 1989	CO Detectors LP Gas
Ardsey, Village of	LL No. 2 of 1981*	Fire Code
Auburn, City of	LL No. 2 of 1991	Housing Code
Babylon, Town of	Ordinance of 1972*	Fire Code
Binghamton, City of	LL No. 3 of 1950*	Plumbing Code

Type here to search



Smithtown, Town of	LL No. 4 of 1990	Fire Prevention
Somers, Town of	LL No. 1 and No. 2 of 1977*	Fire Prevention
Southampton, Town of	LL No. 6 of 1994	Fire Prevention
Syracuse, City of	Ordinance of 1963, amended 1986	Housing Code
Tarrytown, Village of	LL No. 3 of 1992	Sprinkler Systems
Troy, City of	Ordinance No. 24 of 1973*	Housing Code
Tuxedo, Town of	LL No. 2 of 1991	Fire Prevention
Valley Stream, Village of	LL No. 4 of 1981	Fire Prevention
Victor, Town of	LL No. 4 of 1995	Fire Prevention, Building Construction
Watertown, City of	Fire Prevention Ordinance*	Fire Prevention
White Plains, City of	Supplemental Provisions to the U.F.P.&B.C. of 1906	Building, Fire, Plumbing and Housing

LOCAL LAW NO. 1. 1975

A LOCAL LAW PROVIDING FOR THE ESTABLISHMENT OF
A BUREAU OF FIRE PREVENTION, PROVIDING OFFICERS
THEREFOR AND DEFINING THEIR POWERS AND DUTIES.

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

Section 1. Bureau established; membership; organization.

A Bureau of Fire Prevention in and for the Town of Somers, Westchester County, New York, is hereby established.

A. The Bureau of Fire Prevention shall consist of three (3) members as follows: A Chief of the Bureau of Fire Prevention who shall be the Building Inspector of the Town of Somers; two (2) Deputy Chiefs who shall be appointed by the Town Board upon recommendation of the Board of Fire Commissioners of the Somers Fire District. All Deputy Chiefs appointed by the Town Board shall be an active volunteer fireman of the Somers Fire District with at least five (5) years active service. In the event a request for recommendation is not answered within thirty (30) days by the Board of Fire Commissioners of the Somers Fire District, then the Town Board shall without recommendation appoint a qualified person from the Fire District.

B. In the absence of the Chief, a Deputy Chief designated by him shall be acting Chief.

C. The Town Board shall appoint upon the recommendation of the other members of the Bureau of Fire Prevention a Chief Inspector and such other inspectors as the Town Board shall deem necessary for the proper operation of the Bureau.

D. Deputy Chiefs shall hold office at the pleasure of the Town Board and may be removed at the request of the Board of Fire Commissioners of the Somers Fire District, but only after a hearing upon five (5) days' written personal notice. Inspectors shall hold office at the pleasure of the appointing officers.

E. Meetings of the Bureau of Fire Prevention shall be held at the call of the Chief of the Bureau, who shall call such a meeting whenever in his opinion it is necessary or upon the request of two (2) members of the Bureau. Two (2) members shall constitute a quorum for the transaction of business but a lesser number may adjourn to a subsequent date.

F. The Chief Inspector shall attend the meetings of the Bureau of Fire Prevention and may act as complainant in all violations presented by the Bureau and shall receive from the Town of Somers such salary as the Town Board shall from time to time in accordance with the Town Law deem commensurate with the service rendered.

G. The Chief of the Bureau shall preside at all meetings of the Bureau and shall sign and be responsible for all violations and orders and the prosecution thereof and shall act as witness where appropriate in any proceedings. Any Deputy advising the Bureau of a violation shall attend at and be witness to any proceeding involving a violation.

H. The Bureau of Fire Prevention shall promulgate a fire prevention code for the Town of Somers, which shall be administered and enforced by the Chief of the Fire Bureau and the Fire Inspector, as hereinafter provided.

I. The Chief of the Bureau and the Fire Inspector may issue a warning ticket to any person, firm or corporation when there is reasonable cause to believe that such person, firm or corporation has permitted, acquiesced or allowed a violation to exist on his or its property or has committed a violation of the Fire Prevention Code. Such warning notice shall advise the person, firm or corporation of the type of existing violation or violations, the date said inspection was made, and the amount of time such person, firm or corporation has to correct said violation before an appearance ticket will be issued for said violation.

J. The Chief of the Fire Bureau and Fire Inspector may issue an appearance ticket to any person, firm or corporation when they have reasonable cause to believe that such person, firm or corporation has committed a violation of the Fire Prevention Code. Such appearance ticket shall direct the designated person, firm or corporation to appear at the Justice Court, Town of Somers at a designated future time, not later than thirty (30) days from the date of issuance of the appearance ticket in connection with the violation charge. The appearance ticket shall designate the violation alleged to have been committed and shall further provide that upon the failure of the designated person, firm or corporation to appear a warrant will be issued for his arrest. Nothing in this provision shall require the Chief of the Fire Bureau and the Fire Inspector, as a prerequisite, to issue a warning notice before issuing an appearance ticket. The Criminal Procedures Law of the State of New York shall govern all proceedings under this Section.

Section 2. Duties

A. The general duties of the Bureau of Fire Prevention are:

- (1) The prevention of fires.
- (2) Regulating the storage and use of explosives and flammables.
- (3) Regulating the installation and maintenance of automatic and other private fire alarm systems and fire extinguishing equipment.
- (4) Regulating the means and adequacies of exits in case of fire from factories, schools, hotels, lodging houses, asylums, hospitals, nursing homes, churches, halls, theaters, and all other places in which numbers of persons are employed, live or congregate from time to time for any purpose.
- (5) The investigation of the cause, origin, and circumstances of fire.

B. It shall also have the power to promulgate a fire prevention code and to propose regulations covering the aforesaid items, which regulations shall be presented to the Town Board of the Town of Somers for approval, and it shall have such other powers and perform such other duties as are set forth in other sections of this Local Law and as may be conferred from time to time by Local Law.

Section 3. Right of Entry.

The Chief or Deputy Chief of the Bureau of Fire Prevention or any inspector may at all reasonable hours or at any time he or they may have reason to believe that a fire hazard may exist, enter any building or premises within the Town of Somers except the entry of a private one or two family dwelling, for the purpose of making any inspection or investigation which under the provisions of this Local Law he or they may deem necessary.

Section 4. Inspection.

A. The Chief or Deputy Chiefs of the Bureau or any inspector specifically designated thereto shall inspect, as may be necessary, any building or premises, except the entry of a one or two family private dwelling, any hazardous manufacturing process, any storage or installation of gases, chemicals, oils, explosives, flammable material, any and all interior fire alarm or automatic sprinkler systems, and any such other hazards or appliances as may be deemed necessary.

B. In the event any Deputy Chief shall find a dangerous condition or any condition liable to cause fire or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or any accumulation of waste paper, boxes, shavings or any highly flammable materials or any other condition which is so situated as likely to cause fire or explosion or so situated as to endanger property, passageways, doors or windows, or liable to interfere with the operations of a fire department or the egress of occupants in case of fire, they shall forthwith notify the Chief of the Bureau or Chief Inspector in writing and shall notify the occupant orally.

C. The Chief of the Bureau or Chief Inspector shall thereafter and forthwith inspect or cause an inspection to be made by any inspector so designated; and upon such inspection, the inspector shall make such orders as may be necessary for the enforcement of the laws covering the same for the safeguarding of life and property, requiring that the hazardous or dangerous condition found shall be forthwith removed or remedied.

Section 5. Service of Orders

The service of such orders as mentioned in Section 4 shall be made upon the occupant of the premises to whom it is directed either by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance to said premises. Whenever it may be necessary to serve such an order upon the owner of the premises, such order may be served either by delivering to or leaving with the said person a copy of said order or, if such owner is absent from the jurisdiction of the officer making the order, by mailing such copy to the owner's last-known post office address.

Section 6. Appeals.

A. Any such order shall be complied with by the owner or occupant of such premises or building within the time fixed in said order. Any such order made by the Chief of the Bureau of Fire Prevention or any inspector of the Bureau may be appealed from by the owner or occupant within forty-eight (48) hours to the Bureau of Fire Prevention of the Town of Somers by filing his appeal with the reasons therefor with the Chief of the Bureau of Fire Prevention. The Chief shall forthwith call a meeting of the Bureau of Fire Prevention, and within five (5) days after the filing of such appeal, the Bureau of Fire Prevention shall review such order and file its decision thereon; and unless such order is revoked or modified, it shall remain in full force and be complied with within the time fixed in the order, which time shall be construed to run from the date of the filing of the decision of the Bureau of Fire Prevention provided, however, that any such owner or occupant may within five (5) days after the service of any such order or within five (5) days after the filing of the decision of the Bureau of Fire Prevention of an appeal from such order, file his petition with a court of competent jurisdiction praying for a review of such order.

B. Such parties so appealing to the court shall file with said order within (2) days a bond in an amount to be fixed and approved by the court, conditioned to pay all costs of such appeal in case such appellant fails to sustain his appeal or the same is dismissed for any cause.

Section 7. Investigation of Fires.

A. The Bureau of Fire Prevention may investigate the cause, origin and circumstances of any fire occurring in its jurisdiction and so far as possible determine whether the fire was the result of carelessness or design. If it appears to the officer making such an investigation that such fire is of suspicious origin, the Chief of the Bureau shall be immediately notified of the facts. He shall then notify the proper authorities designated by law to pursue the investigation of such matters. He shall also take charge immediately of the physical evidence and shall cooperate with the authorities in the collection of the evidence and the prosecution of the case. Every fire shall be reported in writing to the Bureau of Fire Prevention within two (2) days after the occurrence of the same. Such report shall be in such form as shall be prescribed by the Chief of the Bureau and shall contain a statement of all facts related to the cause, origin and circumstances of such fire, the extent of the damage thereof, the insurance upon said property, and such other information as may be required.

B. The Chief of the Bureau of Fire Prevention shall have the authority after a fire has occurred to a structure, building or other object, to have the aforesaid structure, building or object secured or demolished.

C. All costs and expenses incurred by the Town in connection with the securing or demolition of any structure, building or other object, shall be assessed and levied against the owner of the land on which said structure stands in the next tax levy on property in the Town of Somers.

Section 8. The Town Attorney to Assist

The Town Attorney, upon request of the Bureau of Fire Prevention, shall assist the inspector in the investigation of any fire.

Section 9. Annual Report

The annual report of the Bureau of Fire Prevention shall be made on or before the fifteenth day of January in each year and shall be transmitted to the Supervisor. It shall contain all proceedings taken by the Bureau of Fire Prevention with such statistics as the Chief of the Bureau may wish to include therein. The Bureau of Fire Prevention shall also recommend any amendments to the codes which in its judgment shall be desirable.

Section 10. Penalties for Offenses.

Any person or persons, firm or corporation violating any of the provisions of this Local Law or neglecting to comply with any order issued pursuant to any section therein shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than FIVE HUNDRED DOLLARS (\$500.) for each offense and imprisonment not to exceed thirty (30) days. Each day that said violation is permitted to exist beyond the period fixed in the order so issued shall be a separate offense.

Section 11. Severability

The invalidation of any portion of this Local Law shall not act to invalidate any other portion thereof.

Section 12. Effective Date

This Local Law shall take effect ten (10) days after filing thereof with the Secretary of State, Albany, New York.

Request from Fire Commissioners for Local Law -T.B. 8/12/75

Town Board Meeting 9/11/75 - Hearing date set for 10/14/75

Public Hearing Date. Advertised Reporter Dispatch 10/3/75

Date of Public Hearing - October 14, 1975

Date of Adoption of Local Law 1 - 1975 - 10/14/75

Filed with Secretary of State and State

Comptroller - November 7, 1975

Effective Date - November 7, 1975

AMENDED FEBRUARY 14, 1985 - LOCAL LAW NO. 1-1985

(Please Use this Form for Filing your Local Law with the Secretary of State)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City of TOWN OF SOMERS, COUNTY OF WESTCHESTER
Town
Village

Local Law No. 1 of the year 1985

A local law to Amend the CODE OF THE TOWN OF SOMERS, CHAPTER 26 - FIRE
(Insert title)
PREVENTION BUREAU.

Be it enacted by the TOWN BOARD OF THE TOWN OF SOMERS
(Name of Legislative Body) of the

County
City of
Town
Village as follows:

Section 26-1 Establishment; membership; officers; appearance tickets

A Bureau of Fire Prevention in and for the Town of Somers, Westchester County, New York, is hereby established.

A. The Bureau of Fire Prevention shall consist of three (3) members as follows:

- (1) The Chief of the Bureau of Fire Prevention who shall be the Building Inspector of the Town of Somers.
- (2) Two (2) Deputy Chiefs who shall be appointed by the Town Board upon recommendation of the Board of Fire Commissioners of the Somers Fire District. All Deputy Chiefs appointed by the Town Board shall be an active volunteer fireman of the Somers Fire District with at least five (5) years' active service. In the event a request for recommendation is not answered within (60) days by the Board of Fire Commissioners of the Somers Fire District, then the Town Board shall without recommendation appoint a qualified person from the Fire District.

B. In the absence of the Chief, a Deputy Chief designated by him shall be acting Chief.

C. The Town Board shall appoint upon the recommendation of the other members of the Bureau of Fire Prevention a Chief Inspector and such other inspectors as the Town Board shall deem necessary for the proper operation of the Bureau.

D. Deputy Chiefs shall hold office at the pleasure of the Town Board and may be removed at the request of the Board of Fire Commissioners of the Somers Fire District, but only after a hearing upon five (5) days' written personal notice. Inspectors shall hold office at the pleasure of the appointing

(If additional space is needed, please attach sheets of the same size as this and number each)

officers.

- E. Meetings of the Bureau of Fire Prevention shall be held on the second Monday; in the event a holiday or conflict the meeting may be adjourned to another date. Special meetings may be called at the request of the Chief or by two (2) members of the Bureau. Two (2) members shall constitute a quorum for the transaction of business.
 - F. The Chief Inspector shall attend the meetings of the Bureau of Fire Prevention and may act as complainant in all violations presented by the Bureau and shall receive from the Town of Somers such salary as the Town Board shall from time to time in accordance with the Town Law deem commensurate with the service rendered.
 - G. The Chief of the Bureau shall preside at all meetings. The Chief and the Deputy Chiefs shall sign and be responsible for all violations and orders and the prosecution thereof and shall act as witness where appropriate in any proceedings.
 - H. The Bureau of Fire Prevention shall promulgate a fire prevention code for the Town of Somers, which shall be administered and enforced by the Chief and the Deputy Chiefs of the Fire Bureau and the Fire Inspector, as hereinafter provided.
 - I. The Chief and Deputy Chiefs of the Bureau and the Fire Inspector may issue a warning ticket to any person, firm or corporation when there is reasonable cause to believe that such person, firm or corporation has permitted, acquiesced or allowed a violation to exist on his or its property or has committed a violation of the Fire Prevention Code. Such warning notice shall advise the person, firm or corporation of the type of existing violation or violations, the date said inspection was made, and the amount of time such person, firm or corporation has to correct said violation before an appearance ticket will be issued for said violation.
 - J. The Chief and Deputy Chiefs of the Fire Bureau and Fire Inspectors may issue an appearance ticket to any person, firm or corporation when they have reasonable cause to believe that such person, firm or corporation has committed a violation of the Fire Prevention Code. Such appearance ticket shall direct the designated person, firm or corporation to appear at the Justice Court, Town of Somers at a designated future time, not later than thirty (30) days from the date of issuance of the appearance ticket in connection with the violation charge. The appearance ticket shall designate the violation alleged to have been committed and shall further provide that upon the failure of the designated person, firm or corporation to appear a warrant will be issued for his arrest. Nothing in this provision shall require the Chief and Deputy Chiefs of the Fire Bureau and the Fire Inspectors, as a prerequisite, to issue a warning notice before issuing an appearance ticket. The Criminal Procedures Law of the State of New York shall govern all proceedings under this Subsection.
 - k. Fire Official: the Fire Official referred to in the Fire Prevention Code shall be designated as the Fire Prevention Bureau.
- Section 26-2 Duties

A. The general duties of the Bureau of Fire Prevention are:

- (1) The prevention of fires.
- (2) Regulating the storage and use of explosives, combustibles and flammables.
- (3) Regulating the installation and maintenance of automatic and other private fire alarm systems and fire extinguishing equipment.
- (4) Regulating the means and adequacies of exits in case of fire from factories, schools, hotels, lodging houses, asylums, hospitals, nursing homes, churches, halls, theatres, and all other places in which numbers of persons are employed, live or congregate, from time to time, for any purpose.

- (5) The investigation of the cause, origin, and circumstances of fire.
- B. It shall also have the power to promulgate a fire prevention code and to propose regulations covering the aforesaid items, which regulations shall be presented to the Town Board of the Town of Somers for approval, and it shall have such other powers and perform such other duties as are set forth in other sections of this Chapter and as may be conferred from time to time by Local Law.

Section 26-3 Right Of Entry

The Chief or Deputy Chiefs of the Bureau of Fire Prevention or any Inspector may at all reasonable hours or at any time he or they may have reason to believe that a fire hazard may exist, enter any building or premises within the Town of Somers, except the entry of a private one or two family dwelling, for the purpose of making any inspection or investigation which under the provisions of this Chapter he or they may deem necessary.

Section 26-4 Inspection

- A. The Chief or Deputy Chiefs of the Bureau or any inspector specifically designated thereto shall inspect, as may be necessary, any building or premises, except the entry of a one or two family private dwelling, any hazardous manufacturing process, any storage or installation of gases, chemicals, oils, explosives, combustibles or flammable material, any and all interior fire alarm or automatic sprinkler systems, and any such other hazards or appliances as may be deemed necessary.
- B. In the event, it is found that ^a dangerous condition or any condition liable to cause fire or shall find in any building or upon any premises combustible or explosive material or dangerous accumulation of rubbish or any accumulation of waste paper, boxes, shavings or any highly combustible or flammable materials or any other condition which is so situated as likely to cause fire or explosion or so situated as to endanger property, passages, doors or windows, or liable to interfere with the operations of a fire department or the egress of occupants in case of fire, the Fire Bureau should be notified forthwith.
- C. The Chief or the Deputy Chiefs of the Bureau or Chief Inspector shall thereafter and forthwith inspect or cause an inspection to be made by any inspector so designated; and upon such inspection, the Inspector shall make such orders as may be necessary for the enforcement of the laws covering the same for the safeguarding of life and property, requiring that the hazardous or dangerous condition found shall be forthwith removed or remedied.

Section 26-5 Service of Orders.

The service of such orders as mentioned in Sec 26-4, shall be made upon the occupant of the premises to whom it is directed either by delivering the same to and leaving it with any person in charge of the premises, or in case no such person is found upon the premises, by affixing a copy thereof in a conspicuous place on the door to the entrance to said premises. Whenever it may be necessary to serve such an order upon the owner of the premises, such order may be served either by delivering to or leaving with the said person a copy of said order or, if such owner is absent from the jurisdiction of the officer making the order, by mailing such copy to the owner's last-known post office address.

Section 26-6 Appeals.

- A. Any such order shall be complied with by the owner or occupant of such premises or building within the time fixed in said order. Any such order made by the Chief or Deputy Chiefs of the Bureau of Fire Prevention or any Inspector of the Bureau

may be appealed from by the owner or occupant, within forty-eight (48) hours to the Bureau of Fire Prevention of the Town of Somers by filing his appeal with the reasons therefor with the Chief of the Bureau of Fire Prevention. The Chief shall forthwith call a meeting of the Bureau of Fire Prevention, and, within five (5) days after the filing of such appeal, the Bureau of Fire Prevention shall review such order and file its decision thereon; and, unless such order is revoked or modified, it shall remain in full force and be complied with within the time fixed in the order, which time shall be construed to run from the date of the filing of the decision of the Bureau of Fire Prevention; provided, however, that any such owner or occupant may, within five (5) days after the service of any such order or within five (5) days after the filing of the decision of the Bureau of Fire Prevention of an appeal from such order, file his petition with a court of competent jurisdiction praying for a review of such order.

- B. Such parties so appealing to the court shall file with said order within two (2) days a bond in an amount to be fixed and approved by the court, conditioned to pay all costs of such appeal in case such appellant fails to sustain his appeal or the same is dismissed for any cause.

Section 26-7 Investigation of Fires

- A. The Bureau of Fire Prevention may investigate the cause, origin and circumstances of any fire occurring in its jurisdiction and so far as possible determine whether the fire was the result of carelessness or design. If it appears to the officer making such an investigation that such fire is of suspicious origin, the Fire Bureau shall be immediately notified of the facts. The Fire Bureau shall then notify the proper authorities designated by law to pursue the investigation of such matters. He shall also take charge immediately of the physical evidence and shall cooperate with the authorities in the collection of the evidence and the prosecution of the case. Every fire shall be reported in writing to the Bureau of Fire Prevention within two (2) days after the occurrence of the same. Such report shall be in such form as shall be prescribed by the Chief of the Bureau and shall contain a statement of all facts related to the cause, origin and circumstances of such fire, the extent of the damage thereof, the insurance upon said property, and such other information as may be required.
- B. The Chief of the Bureau of Fire Prevention shall have the authority after a fire has occurred to a structure, building or other object, to have the aforesaid structure, building or object secured or demolished.
- C. All costs and expenses incurred by the Town in connection with the securing or demolition of any structure, building or other object, shall be assessed and levied against the owner of the land on which said structure stands in the next tax levy on property in the Town of Somers.

Section 26-8 Assistance of Town Attorney

The Town Attorney, upon request of the Bureau of Fire Prevention, shall assist the Fire Bureau in the investigation of any fire.

Section 26-9 Annual Report

The annual report of the Bureau of Fire Prevention shall be made on or before the thirty-first day of January in each year and shall be transmitted to the Town Board. It shall contain all proceedings taken by the Bureau of Fire Prevention with such statistics the Bureau may wish to include therein. The Bureau of Fire Prevention shall also recommend any amendments to the codes which, in its judgment, shall be desirable.

Section 26-10 Penalties for Offenses.

Any person or persons, firm or corporation violating any of the provisions of this Chapter or neglecting to comply with any order issued pursuant to any section therein shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than two hundred fifty dollars (\$250.00) for each offense and imprisonment not to exceed fifteen (15) days. Each day that said violation is permitted to exist beyond the period fixed in the order so issued shall be a separate offense.

Date of Public Hearing .	Jan. 17, 1985
Date of Publication of Public hearing notice	Jan. 4, 1985
Date of Posting on Town Clerk's bulletin board of notice	Jan. 4, 1985
Date of Adoption of Local Law	Feb. 14, 1985
Date of Posting of Adoption of Local Law	February 27, 1985
Date of filing with Secretary of State	March 5, 1985
Date of filing with State Comptroller	March 5, 1985
Dept. of State - State Records and Law Bureau	
Effective Date	

PROPOSED LOCAL LAW # 2 - 1977

APPENDIX D

ORDINANCE ADOPTING BASIC FIRE CONTROL MEASURES AND REGULATIONS GOVERNING CONDITIONS WHICH COULD IMPEDE OR INTERFERE WITH FIRE SUPPRESSION FORCES.

Section 1. Adoption of Fire Control Measures and Regulations. There is hereby adopted by the Town of Somers — the fire control measures and regulations as herein set forth for the purposes of controlling conditions which could impede or interfere with fire suppression forces.

Section 2. Authority at Fires and Other Emergencies. The fire official or his duly authorized representatives, as may be in charge at the scene of a fire or other emergency involving the protection of life and/or property, is empowered to direct such operations as may be necessary to extinguish or control any suspected or reported fires, gas leaks, or other hazardous conditions or situations or of taking any other action necessary in the reasonable performance of their duty. The fire official may prohibit any person, vehicle or object from approaching the scene and may remove or cause to be removed from the scene any person, vehicle or object which may impede or interfere with the operations of the fire department. The fire official may remove or cause to be removed any person, vehicle or object from hazardous areas. All persons ordered to leave a hazardous area shall do so immediately and shall not re-enter the area until authorized to do so by the fire official.

Section 3. Interference with Fire Department Operations. It shall be unlawful to interfere with, attempt to interfere with, conspire to interfere with, obstruct or restrict the mobility of, or block the path of travel of any fire department emergency vehicle in any way, or to interfere with, attempt to interfere, conspire to interfere with, obstruct or hamper any fire department operation.

Section 4. Compliance with Orders. A person shall not willfully fail or refuse to comply with any lawful order or direction of the fire official or to interfere with the compliance attempts of another individual.

Section 5. Vehicles Crossing Fire Hose. A vehicle shall not be driven or propelled over any unprotected fire hose of the fire department when laid down on any street, alley-way, private drive or any other vehicular roadway without the consent of the fire official in command of said operation.

Section 6. Definition of Authorized Emergency Vehicle. Authorized emergency vehicles shall be restricted to those which are defined and authorized under the laws of the State of — New York.

Section 7. Operation of Vehicles on Approach of Authorized Emergency Vehicles. Upon the approach of any authorized emergency vehicle, giving audible and visual signal, the operator of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb of the street or roadway, clear of any intersection, and shall stop and remain in such position until the authorized emergency vehicle or vehicles shall have passed, unless otherwise directed by the fire official or a police officer.

Section 8. Vehicles Following Fire Apparatus. It shall be unlawful for the operator of any vehicle, other than one on official business, to follow closer than two hundred (200) feet from any fire apparatus traveling in response to a fire alarm, or to drive any vehicle within the block or immediate area where fire apparatus has stopped in answer to a fire alarm.

Section 9. Unlawful Boarding or Tampering with Fire Department Emergency Equipment. A person shall not without proper authorization from the fire official in charge of said fire department emergency equipment, cling to, attach himself to, climb upon or into, board, or swing upon any fire department emergency vehicle, whether the same is in motion or at rest, or sound the siren, horn, bell or other sound-producing device thereon, or to manipulate or tamper with, or attempt to manipulate or tamper with any levers, valves, switches, starting devices, brakes, pumps, or any

THE BOCA BASIC FIRE PREVENTION CODE/1975

equipment or protective clothing on, or a part of, any fire department emergency vehicle.

Section 10. Damage, Injury—Fire Department—Equipment, Personnel. It shall be unlawful for any person to damage or deface, or attempt, or conspire to damage or deface any fire department emergency vehicle at any time, or to injure, or attempt to injure or conspire to injure fire department personnel while performing departmental duties.

Section 11. Emergency Vehicle Operation. The driver of any emergency vehicle, as defined in Section 5 of this ordinance, shall not sound the siren thereon or have the front red lights on or disobey any existing traffic regulation, except when said vehicle is responding to an emergency call or when responding to, but not upon returning from a fire. Tactical strategies such as, but not restricted to, "move-ups" do not constitute an emergency call. The driver of an emergency vehicle may:

- (a) Park or stand irrespective of the provisions of existing traffic regulations;
- (b) Proceed past a red or stop signal or other sign, but only after slowing down as may be necessary for safe operation;
- (c) Exceed the prima facie speed limit so long as he does not endanger life or property;
- (d) Disregard regulations governing direction of movement or turning in specified directions;
- (e) The exemptions herein granted to an emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of such vehicle.

Section 12. Blocking Fire Hydrants and Fire Department Connections. It shall be unlawful to obscure from view, damage, deface, obstruct or restrict the access to any fire hydrant or any fire department connection for the pressurization of fire suppression systems, including fire hydrants and fire department connections that are located on public or private streets and access lanes; or on private property.

If upon the expiration of the time mentioned in a notice of violation, obstructions or encroachments are not removed, the fire official shall proceed to remove the same. Cost incurred in the performance of necessary work shall be paid from the municipal treasury on certificate of the fire official and with the approval of the chief administrative official; and the legal authority of the municipality shall institute appropriate action for the recovery of such costs.

Section 13. Hydrant Use Approval. A person shall not use or operate any fire hydrant intended for use of the fire department for fire suppression purposes unless such person first secures a permit for such use from the fire official and the water company having jurisdiction. This section shall not apply to the use of such hydrants by a person employed by, and authorized to make such use by, the water company having jurisdiction.

Section 14. Water Supply. The fire official shall recommend to the chief administrative official of the municipality the location or relocation of new or existing fire hydrants and the placement or replacement of inadequate water mains deemed necessary to provide an adequate fire flow and distribution pattern. A fire hydrant shall not be placed into or removed from service until approved by the fire official.

Section 15. Yard Systems. All new and existing ship yards, oil storage plants, lumber yards, amusement or exhibition parks, and educational or institutional complexes and similar occupancies and uses involving high fire, or life hazards, and which are located more than one hundred fifty (150) feet from a public street or which require quantities of water beyond the capabilities of the public water distribution system shall be provided with properly placed fire hydrants. Such fire hydrants shall be capable of supplying fire flows as required by the fire official and shall be connected to a water system in accordance with accepted engineering practices. The fire official shall designate and approve the number and location of fire hydrants. The fire official may require the installation of sufficient fire hose and equipment housed in accordance with the approved rules and may require the establishment of a trained fire brigade when the hazard involved requires such measures. Private hydrants shall not be placed into or removed from service until approved by the fire official.

APPENDIX D

Section 16. Maintenance of Fire Suppression Equipment. A person shall not obstruct, remove, tamper with or otherwise disturb any fire hydrant or fire appliance required to be installed or maintained under the provisions of the Fire Prevention Code except for the purpose of extinguishing fire, training or testing purposes, recharging, or making necessary repairs, or when permitted by the fire official. Whenever a fire appliance is removed as herein permitted, it shall be replaced or re-installed as soon as the purpose for which it was removed has been accomplished. Defective and non-approved fire appliances or equipment shall be replaced or repaired as directed by the fire official.

Section 17. Sale of Defective Fire Extinguishers. A person shall not sell, trade, loan or give away any form, type or kind of fire extinguisher which is not approved by the fire official, or which is not in proper working order, or the contents of which do not meet the requirements of the fire official. The requirements of this section shall not apply to the sale, trade or exchange of obsolete or damaged equipment for junk and said units are permanently disfigured or marked with permanent sign identifying the unit as junk.

Section 18. Street Obstructions. A person or persons shall not erect, construct, place, or maintain any bumps, fences, gates, chains, bars, pipes, wood or metal horses or any other type of obstruction in or on any street, within the boundaries of the municipality. The word *street* as used in this ordinance, shall mean any road-way accessible to the public for vehicular traffic, including, but not limited to, private streets or access lanes, as well as all public streets and highways within the boundaries of the municipality. Highway Departments & Utility Companies shall give adequate notice to the Fire Dispatcher of any planned maintenance that would close off a street for any period of time.

Section 19. Automatic Dialing Equipment To Be:

- (a) Connected only to a phone number provided by the Fire District;
- (b) provided with a message approved by the Fire District;
- (c) isolated from burglar alarm systems.

Section 20. Fire Zones necessary for access of apparatus are to be provided at the request of the Bureau of Fire Prevention.

Town Board Meeting 8/11/77 - Hearing date set for 9/15/77

Public Hearing Date Advertised in Reporter Dispatch, Putnam Edition - 9/2/77

Date of Posting of Public Hearing on bulletin board by Town Clerk - 8/19/77

Date of Public Hearing - 9/15/77

Date of Adoption Local Law No. 2-1977 - 10/13/77

Date received and filed with State Comptroller - 10/27/77

Date received and filed with Secretary of State - 10/27/77

Effective date 11/2/77

Sent to:
TB, TA, TC
7/31/2020
Kd

July 1, 2020

Teresa Stegner
Town of Somers, NY
335 Rte 202
Somers, NY 10589

Dear Valued Client:

This letter is sent with your annual renewal agreement to inform you of a change in our annual renewal procedures. In a continuing effort to limit the impact of administrative requirements for our services, and thereby helping control the costs of our services, we are including an auto-renewal clause in the enclosed agreement. Upon review of the enclosed agreement, you will note that it is identical to those you have received in the past except for inclusion of the Auto-Renewal Clause. After this agreement, you will not receive annual renewal agreements.

This results in multiple advantages that help control costs as well as streamline processes. For example, besides the obvious reduction in costs to print and mail the documents, it reduces our effort to administer them as well as your efforts to process and return them to us. Further, you will have to be specifically notified in the event that there is an increase in costs for the service. In the event there is a change, we will provide more than a year's notice. As a result, unless you've received a document from us, you know what your ongoing budget will be without waiting for your renewal or contacting us. We hope that will help streamline your budgeting effort as well.

Of course, the Auto-Renewal feature in no way binds you to the services any more than was previously the case. The service can still be cancelled with 30-days notification, even in the middle of a service year. Therefore there is no concern that you are committing funds beyond the current budget. This is not intended to be an 'end run' in any way. As previously stated, we are simply trying to streamline the entire process. Thanks to loyal clients like you, we continue to grow and face the need to simplify all our processes.

If you have any questions or would like to discuss this further, please do not hesitate to reach out to us. We sincerely thank you for the opportunity to continue to serve you with these important services and look forward to a continued long term and mutually beneficial relationship.

Sincerely,



Franco Rossi
President

**GIS INTERNET SERVICES ANNUAL MAINTENANCE AGREEMENT
FOR THE TOWN OF SOMERS, NY**
For the time period 10/1/2020 through 9/30/2021

July 1, 2020

CAI Technologies, a New Hampshire corporation with its office located at 11 Pleasant Street, in Littleton, N.H. 03561, hereinafter called CAI, proposes to the Town of Somers, NY, hereinafter called the CLIENT, to provide GIS Internet services according to the specifications, terms, and conditions below written:

Witnesseth that:

Whereas, CAI represents that they are authorized, qualified, and experienced to provide professionally recognized mapping and GIS services; and

Whereas, the CLIENT desires to publish its GIS data on the Internet,

Now, therefore, CAI proposes the following:

I. SUMMARY

A. Publish the CLIENT's GIS to the Internet

1. CAI, utilizing its AxisGIS application, shall publish the CLIENT's GIS data to the Internet.

B. CLIENT Support

1. CAI shall provide telephone, fax, and email support services concerning AxisGIS. These services can be used to answer usage and technical questions.
2. CAI, shall respond to any alerts concerning poor performance or lack of performance of the site, and provide verbal advisories as to how and when the site shall be corrected (if it is determined that the website and/or publication service is not performing properly).

II. CLIENT RESPONSIBILITIES

The CLIENT shall designate a project liaison who will be CAI's main contact during the course of the service, and who will be responsible for all CLIENT related obligations in this contract.

III. COMPENSATION AND PAYMENT

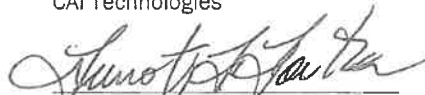
The CLIENT shall pay a total amount of \$2400 under this agreement which shall be due upon contracting. This Annual Maintenance Agreement will automatically renew at the above shown fee. Said renewal can be canceled at any time with 30 days notification.

This contract shall be construed under the laws of the State of New York

In Witness whereof, the parties hereto have executed this agreement, as of the date first above written, by their duly authorized officers.

Town of Somers, NY

CAI Technologies



Timothy Fountain, GISP
Vice President

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between:

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

1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: “The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order...”
- b. The PSC subsequently issued an Order for Case 14-M-0224 on April 21, 2016, which authorized Community Choice Aggregation (“CCA”) throughout New York State (the “CCA Order”) and on November 15, 2018 issued the “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” reauthorizing the Sustainable Westchester CCA program under a Master Implementation Plan.
- c. Sustainable Westchester’s CCA Program enrolled customers from an initial group of 20 participating municipalities in April 2016. Since then, seven additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For municipalities in the New York State Electric and Gas (“NYSEG”) utility territory, the current Electric Service Agreement for the Sustainable Westchester CCA Program will terminate on November 30, 2020 .
- e. In compliance with the PSC CCA Orders, the **Municipality** has adopted local legislation to enable Community Choice Aggregation .
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester CCA Program, the **Municipality** wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

2. Definitions:

- a. **Eligible Customers** – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2019 ESA and have not opted-out, or “Newly Eligible Consumers” that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the

- default Supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Orders.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) that procures electric power for Eligible Customers in connection with this CCA Program.
 - d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and the 2020 ESA. A Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
 - i. Residential accounts: 7.20 cents/kwh;
 - ii. Small commercial accounts: 7.20 cents/kwh
 - e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
 - f. **Electric Service Agreement (“ESA”):** An agreement that implements a CCA Program and contains all the terms and conditions of the Program.
 - g. **2019 ESA:** The ESA which implemented the Sustainable Westchester CCA Program during the period from May 1, 2019 to November 30, 2020.
 - h. **2020 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing December 1, 2020 for the NYSEG service territory. The 2020 ESA shall have substantially the same terms outlined in the attached 2019 ESA Template (Attached as Exhibit 1). The 2020 ESA Template tracks as closely as possible to the 2019 ESA in its content, with only minor changes regarding supplier data requirements, additional clarification regarding NY renewable energy certificate registration, provision for recovering any NYS subsidy for CCA purchase of renewable energy certificate if such subsidy comes into force after contract signing, and deletion of the optional time-of-use product.
 - i. **CCA Orders:** Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224, which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; and the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan.
 - j. **Qualifications Review:** A verification of the status of the Competitive Supplier as an electricity supplier in the Distribution Utility’s service territory. A precondition for attaining such status is that Competitive Supplier has met the credit requirements established by the New York Independent Systems Operator .
 - k. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester, which has adopted the applicable local legislation for the Community Choice Aggregation Program.
 - l. **Program Manager:** Sustainable Westchester, a non-profit corporation of which the Participating Municipality is a member.
 - m. **Public Service Commission (“PSC”):** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission .

3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- To establish participation by **The Municipality (hereafter, the “Participating Municipality”)** in a Community Choice Aggregation Program (hereafter, the “Program”) that will be managed on its behalf by **Sustainable Westchester, (hereafter, the “Program Manager”)** under the 2020 ESA.
 - To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2020 ESA in the event they execute it.
 - To affirm that the Participating Municipality and Program Manager agree to execute the 2020 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), below.
4. **Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester agrees to perform all duties outlined in the 2020 ESA and, prior to execution of that agreement, Program Manager agrees to:
- Provide the involved agencies and parties to the PSC CCA Orders, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
 - Manage the energy procurement bidding process including:
 - the identification and notification of potential firms seeking to be the Competitive Supplier,
 - the management of the Request for Proposals (“RFP”) process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
 - the preparation of the 2020 ESA that will be included in the RFP,
 - the acceptance, secure opening, and review of the responses to the RFP, and
 - the organization of the Qualifications Review and bid evaluation,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
 - Sign the 2020 ESA in a timely fashion subject to the conditions that:
 - the Competitive Supplier is deemed qualified for the duration of the 2020 ESA by the Qualifications Review, and
 - such Competitive Supplier’s response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.
 - Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
5. **Roles and responsibilities of the Participating Municipality:** the Participating Municipality agrees to:
- Sign the 2020 ESA in a timely fashion subject to the conditions that:
 - the Competitive Supplier is deemed qualified for the duration of the 2020 ESA by the Qualifications Review, and
 - such Competitive Supplier’s response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.
6. **Term and Termination:** Memorandum of Understanding shall expire on the earlier of November 30, 2020 or the date on which the 2020 ESA is signed by the Participating

Municipality, the Program Manager, and the selected Competitive Supplier .
Participating Municipality shall have the right to terminate this Memorandum of
Understanding for any of the reasons set forth in the Termination section of the ESA attached
hereto as Exhibit 1.

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

City/Town/Village of _____

Authorized Official Name and Title: _____

Signature: _____

Address: _____

Telephone(s): _____

E-Mail Address: _____

Address for Notices: _____

Sustainable Westchester, Inc.

Authorized Official Name and Title: Steven Rosenthal, Interim Executive Director

Signature: _____

Address: 40 Green Street, Mount Kisco, NY 10549

Telephone(s): (914) 242-4725

E-Mail Address: steve@sustainablewestchester.org

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

Attachments: Exhibit 1, 2020 ESA Template

Sent to:
TB, YA, TC
7/24/2020
KD

Electric Service Agreement

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

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RECITALS

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

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

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

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

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

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

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding 2020, issue a request for proposals to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the “2016 ESA”) with four municipalities in the Westchester New York State Electric and Gas (“NYSEG”) utility territory, and added one more municipality in 2018, and the second contracts expire on November 30, 2019;

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

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

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

WHEREAS, Municipality has chosen the Standard Product / 100% Renewable Clean Power Product [select one and initial] as the Default Product for its residents and small businesses;

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

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

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

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

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

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

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

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

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

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

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

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

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

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

1.8 Default Product – The product selected by the Municipality for supply to its eligible residents and small businesses upon enrollment, unless they take action to select a different product or opt out..

1.9 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier. Residential and small commercial consumers within the Municipality that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.

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

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

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

1.13 Effective Date - The day immediately following final day of the rescission period, which immediately follows the opt-out period, which occurs after notifications to Eligible Consumers, which occurs after this ESA has been executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

1.14 Eligible Consumers – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2019 ESA and have not opted-out, or “Newly Eligible Consumers” that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date of this ESA.

1.15 ESA - This Electric Service Agreement.

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

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

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

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

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

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

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

1.23 kWh, kW - Kilowatt-hour and kilowatt, respectively.

1.24 Local Law – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice Program.

1.25 Memorandum of Understanding 2020 – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.

1.26 Newly Eligible Consumers – Residential and small consumers of electricity that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality and those who complete or terminate other 3rd party supply contracts and have returned to Default Service, provided these consumers have not previously opted out of the Program.

1.27 New Taxes - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

1.28 NYISO - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.

1.29 Participating Consumers - Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or have been served by the Program under the 2016 ESA and have not opted out, or are Newly Eligible Consumers.

1.30 Parties - The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.

1.31 Point of Delivery - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.

1.32 Point of Sale - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

1.33 Program - Sustainable Westchester Community Choice Aggregation Program.

1.34 Program Manager – Sustainable Westchester, Inc., a non-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

1.35 PSC or DPS - The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.

1.36 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same rate class and must not be unique to Competitive Supplier's customers.

1.37 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

1.38 Retail Price - As set forth in Exhibit A.

1.39 Service Commencement Date - The date of the Participating Consumers' first meter read date after the Effective Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.40 Term - As defined in Article 4.1.

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

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

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

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

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

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the CCA Orders and Local Law for Eligible Consumers to purchase electricity from the

Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

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

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

2.4 CONDITIONS PRECEDENT

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

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

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables or enhancement of data exchange between the Parties), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set

forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

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

3.2 NOTIFICATION TO NEWLY ELIGIBLE CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose

a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

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

3.3 CONSUMER AWARENESS

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

3.4 ENROLLMENT

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

3.4.2 Newly Eligible Consumers - If Newly Eligible Consumers elect not to opt-out of the Program as provided in Article 3.2, such Newly Eligible Consumers will be automatically enrolled by Competitive Supplier in the Program. These Newly Eligible Consumers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to Newly Eligible Consumers. Competitive Supplier shall enroll such Newly Eligible Consumers in accordance with applicable PSC and Distribution Utility rules.

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

Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

3.4.4 Consumers Served by Third-Parties - Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers. Newly Eligible Consumers who opt-in as provided in this Article 3.4.4 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to Newly Eligible Consumers.

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

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read determined by the Parties and delineated in Exhibit A, unless terminated earlier under Article 4.2 below ("Term"). Term shall not exceed 36 months.

4.2 TERMINATION

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

- a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or
- d) by the Municipality, if a court, PSC or other lawful authority adjudicates contrary to Article 6; or
- e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the

Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or

f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

4.3 OBLIGATIONS UPON TERMINATION

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

Upon termination, Competitive Supplier shall have all Participating Consumers switched back to obtaining supply from the Distribution Utility by submitting all consumer drops via EDI to the Distribution Utility in a form acceptable to the Distribution Utility.

4.4 EXTENSION

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

ARTICLE 5 CONTINUING COVENANTS

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

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies

with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

5.2 CUSTOMER SERVICE ACCESS

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

5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve

Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small commercial) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

In any event, should either Program Manager or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumers at the NYISO strip clearing price for the appropriate zone (i.e., H, upper Westchester or I, lower Westchester), in which the capacity tag reduction is certified by appropriate party. Program Manager agrees it does not intend to pursue any actions that would increase the capacity tag obligation to Competitive Supplier.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to

mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

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

Competitive Supplier agrees to allow and facilitate the Program Manager to utilize the supplier messages area of the bill for Program communications.

5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program

Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Consumer lists in an electronic format, secure transfer mode, frequency and format as set out in Exhibit D, subject to non-disclosure agreement for customers who have not requested that their personal information be denied to Program Manager or to Municipality.

5.9 COMPLIANCE WITH LAWS

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

5.10 CONSENT

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

ARTICLE 6 ROLE OF THE MUNICIPALITY

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

Municipality may conduct outreach to the community in addition to the initial program notification letter, **which will be delivered at the Competitive Supplier's expense, with a Business Reply Mail insert to allow Eligible Consumers to opt out without postage expense.**

Municipality will report on their endeavors to Program Manager to inform residents on the Program and “non-demand charge” commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;
- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders, including but not limited to the following:
 - “5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.
 6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued.”
- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is verified to be a qualified electricity supplier by the NYISO in the Distribution Utility’s service territory and the Competitive Supplier’s response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA;
- e. Provide the Municipality with timely communications content to effect customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program’s implementation;
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities; and
- g. Fulfill any other responsibilities as set forth in this agreement herein.

7.2 PROGRAM MANAGER FEE

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

7.3 PAYMENT OF FEE

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

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

7.4 INDEPENDENT CONTRACTOR

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

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

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

8.2 OBLIGATION TO SERVE

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 METERING

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

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

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

8.4.2 Billing and Payment

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

8.4.3 Regional and Local Transmission

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

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Consumers' bills. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Consumers shall be responsible for identifying and requesting any

exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE PSC ORDERS

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

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

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

10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, on or before the Effective Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

10.3 DISPUTE RESOLUTION

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

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with a quarterly report of sales which will contain: (i) the actual aggregate kWh sales for each meter read of the reporting period and (ii) the number of Participating Consumer accounts active in each meter read of the reporting period, as well as the kWh and number of accounts disaggregated by rate class (residential and small commercial) and product (Standard and 100% Renewable). The quarterly report will be due to the Municipality or its agent within sixty (60) days following the close of each quarter (March 31, June 30, September 30, and December 31). The aggregate kWh sales and number of Participating Consumer accounts shall be listed in the report both by rate code and rate name as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

12.1.2 Consumer-Related Data

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

12.1.3 Standard of Care

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it

shall provide corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

12.2 POWER SUPPLY REPORT

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

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

12.3 BOOKS AND RECORDS

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

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

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

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

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

13.2 DISPUTE RESOLUTION

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

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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

14.2 NOTICE OF INDEMNIFICATION CLAIMS

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

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which

occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

14.4 DUTY TO MITIGATE

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

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

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

- a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the Municipality in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

15.2 BY THE MUNICIPALITY

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

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

15.3 BY THE PROGRAM MANAGER

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

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

ARTICLE 16 INSURANCE

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

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute

insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

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

ARTICLE 17 REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

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

17.2 QUALIFYING REGULATORY EVENT

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

17.3 NEW TAXES

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

ARTICLE 18 MISCELLANEOUS

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Manager shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Manager in the ESA.

Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

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

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

18.3 NOTICES

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

If to Competitive Supplier:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
55 Maple Ave.
Mount Kisco, NY 10549

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

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

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

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the

Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

18.6 FORCE MAJEURE

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

18.7 EXPENSES

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

18.8 NO JOINT VENTURE

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

18.9 JOINT WORK PRODUCT

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

18.10 COUNTERPARTS

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

18.11 WAIVER

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

18.12 ADVERTISING LIMITATIONS

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

18.13 PRESS RELEASES

The Parties agree to cooperate in good faith prior to the issuance of any formal press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

18.14 HEADINGS AND CAPTIONS

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

18.15 SURVIVAL OF OBLIGATION

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

ARTICLE 19 REMEDIES

19.1 GENERAL

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

19.2 LIMITATIONS

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

//Signatures Follow//

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

COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

EXHIBIT A – PART 1 PRICES AND TERMS – STANDARD PRODUCT

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in **New York State Electric & Gas** territory commencing service on the first Consumer meter-read date after November 30, 2020.

Table 1:

Rate Class	Fixed Price per kWh	
Residential	\$0.0###	
Small Commercial	\$0.0###	

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after November 30, 2020 and continue until the first Consumer meter read date after _____, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA. The Parties agree they may extend this Agreement up to ____ months upon mutual written agreement to amend the Term.

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

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after November 30, 2020.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Firm Full-Requirements Power Supply mix in an amount equal to New York State's Renewable Portfolio Standards in a manner designated by New York State.

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

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

Supplier shall serve Newly Eligible Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above at the fixed price in Table 1 above.

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

Firm Full-Requirements Price for 100% Renewable Clean Power Product by Rate Classification for all Participating Consumers located in New York State Electric & Gas territory commencing service on the first Consumer meter-read date after November 30, 2020.

Table 3:

Rate Class	Fixed price per kWh
Residential	\$0.0####
Small Commercial	\$0.0####

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after November 30, 2020 and continue until the first Consumer meter read date after _____, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

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

Start-Up Service Date: 100% Renewable Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after November 30, 2020.

This Exhibit A-Part 2 includes a purchase of Renewable Energy Certificates sourced from hydropower, solar energy or wind energy generating facilities ("RECs") in an amount equal to 100% of the Participating Consumers' electricity usage less any then-current Tier 1 REC purchase obligation applicable to alternative retail electric suppliers in New York. Each REC represents Attributes associated with one MWh of electricity generated by a renewable fuel type defined by the New York Generation Tracking System ("NYGATs") Operating Rules, dated May 18, 2018, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program

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

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

Supplier shall serve Newly Eligible Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above at the price in Table 3, above.

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

**EXHIBIT B - TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA
SUMMARY**

Rate Code	Residential	Small Commercial
Standard Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Rate Code	Residential	Small Commercial
100% Renewable Supply		
Municipality		
# of Default Accounts of Eligible Consumers		

	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

EXHIBIT C - PAYMENT

PROGRAM MANAGER BANK INFORMATION FOR PAYMENTS BY ACH

Bank Name:

Bank Routing Number:

Bank Account Number:

Federal ID:

EXHIBIT D - DATA REQUIREMENTS

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

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

1. Newly_Eligible_Consumer file - Competitive Supplier will obtain this data quarterly from the Utility and the notification mailing is made from the list following procedures described elsewhere in this ESA. The Program Manager requires a matching dataset as defined below in order to perform it's duties for customer service during the opt out period.
2. Post-enrollment file - After the Competitive Supplier sends enrollments to the Utility, either at the beginning of this contract or after a Newly Eligible Consumer opt out period, the Competitive Supplier will send this file to the Program Manager to update its records.
3. Commission file - Standard practice for aggregation suppliers.

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

<u>Newly Eligible Consumer file</u>	<u>Post-enrollment file</u>	<u>Commission file</u>
Pre-Enrollment ID Customer Name Service Address Service City State Zip Mailing Address Mail City State Zip Customer Classification Rate Category	Pre-Enrollment ID Utility Account Number Meter Read Cycle Account Start Account End Enrollment Issue/Reason Code Municipality Name Contract Start Contract End Rate Class Annual kWh Capacity Tag Capacity Start Date Capacity End Date Billing Name Billing Address Billing State Billing City Billing Zip Enrollment Date (Contract Start Date) Load Zone	Customer Name Service Account Number Invoice Number Contract ID Municipality Customer Class Invoice Date Start Date End Date Earned Date Scheduled Payment Month Usage UDC Code Commission Rate/Amount Commission Payment Lag (Days)

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

EXHIBIT E - OPTION TO SUPPLY POWER

Competitive Supplier shall provide power to Participating Consumers, including through the purchase of REC's, throughout the term of this ESA and from sources selected in Competitive Supplier's own discretion. However, Program Manager desires to build or contract with a third party to supply renewable sources of energy (the "Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Consumers. Upon completion of any such Renewable Power Source the Program Manager may offer to sell output from the Renewable Power Source to Competitive Supplier, either directly or through an Associated Entity, under a separate Power Purchase Agreement ("PPA"). Upon mutual agreement of such arrangement and execution of the PPA, Competitive Supplier (or its Associated Entity) shall take the output of the Renewable Power Source for use for the Program. The Competitive Supplier and Program Manager agree that any such PPA shall include a provision requiring the Competitive Supplier or the Program Manager to agree to a rate adjustment to Participating Consumers in the following circumstances:

(i) In the event that executing the PPA makes it necessary for Competitive Supplier (or an Associated Entity) to sell power previously purchased to meet Competitive Supplier's obligations under this ESA at a lower price than Competitive Supplier paid for such power, the Program Manager shall agree to a rate adjustment to Participating Consumers to compensate Competitive Supplier (or its Associated Entity) for any losses suffered by the Competitive Supplier as a result of the difference in price.

(ii) In the event that executing the PPA makes it necessary for Competitive Supplier (or an Associated Entity) to sell power previously purchased to meet Competitive Supplier's obligations under this ESA at a higher price than Competitive Supplier paid for such power, the Competitive Supplier (or an Associated Entity) shall agree to a rate adjustment to Participating Customers to compensate Participating Customers for any gains inured to the benefit of Competitive Supplier as a result of the difference in price.

Sent to:
TB, TA, TC
7/31/2020
KO
Telephone
(914) 277-3539
FAX
(914) 277-3790

BUILDING DEPARTMENT
Town of Somers
WESTCHESTER COUNTY, N.Y.

**TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589**

Thomas J. Tooma, Jr.
Building Inspector



MEMO TO: Rick Morrissey, Town Supervisor

FROM: Thomas J. Tooma, Jr., Building Inspector

RE: HVAC and Oil Contract

DATE: July 15, 2020

Permission is being requested to re-solicit RFP's from companies that can provide a contract to furnish and deliver oil, as well as for emergency and non-emergency services, including maintenance for HVAC. RFP's were sent out in mid-June with no response.

With regard to oil, the contract is to furnish and deliver #2-TW Fuel and Heating Oil to the Somers Highway Department, Somers Library, Somers Parks and Recreation Office, Somers Police Station, Somers Town House, Somers Town House Annex, and Van Tassell House (Nutrition).

Sent to:
TB, TA, TC 8/11/2020
KD

Kim DeLucia

From: Ellen Devey <
Sent: Wednesday, July 15, 2020 3:31 PM
To: Rick Morrissey
Cc: Richard A Auerbach; Bobby Brower; Kim DeLucia
Subject: Affordable Housing Board

Follow Up Flag: Follow up
Flag Status: Flagged

Rick,
I do want to be on the board for a new term, thank you.
Ellen Devey

Sent to:
TB, TA, TC 8/20/2020
KD

Kim DeLucia

From: Rich Auerbach
Sent: Wednesday, July 15, 2020 3:42 PM
To: Rick Morrissey
Cc: Bobby Brower; Ellen Devey; Kim DeLucia
Subject: Affordable Housing Board

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Rick

Thank you for your letter. I wish to remain on the AHB for a new term

Regards
Rich Auerbach

Sent from my iPhone

Sent to:
TB, TA, TC
8/4/2020
KD

INTEROFFICE MEMORANDUM

TO: TOWN SUPERVISOR AND MEMBERS OF THE TOWN BOARD
FROM: PROGRAM DIRECTOR, BARBARA TABERER
SUBJECT: 2019 TRITOWN CONTRACT
DATE: 7/15/2020
CC: TOWN CLERK AND FINANCE DIRECTOR

Program Director, Barbara Taberer respectfully requests the Town Supervisor execute the 2019 Tr-Town Agreement between the Towns of Lewisboro, North Salem and Somers.

See attached contract .

OFFICE OF THE SUPERVISOR

Telephone
(914) 277-3637
Fax
(914) 276-0082

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

RICK MORRISSEY
SUPERVISOR



2019
MEMORANDUM OF AGREEMENT AMONG THE
TOWNS OF SOMERS, LEWISBORO, AND NORTH SALEM,
with regard to
THE SENIOR CITIZEN NUTRITION PROGRAM

The Town of Somers will provide a Senior Citizen Nutrition Lunch Program meeting the requirements of the Older Americans Act and the rules and regulations of the New York State Office for the Aging for the persons qualifying in the Towns of Somers, Lewisboro and North Salem. Such services will be provided in accordance with the Town of Somers' agreement with the County of Westchester.

The Town of Somers may terminate this Agreement if its arrangement with Westchester County is terminated. If the program is terminated by Westchester County, Somers will promptly notify the supervisors of Lewisboro and North Salem.

The Towns of Lewisboro and North Salem will furnish (1) appropriate insurance in accordance with the requirements of Westchester County, if applicable and (2) proof of insurance and indemnities to Westchester County as might be required by Westchester County.

The Towns of Lewisboro and North Salem will provide the Town of Somers with proof of existing General Liability Insurance containing Broad Form Contractual Liability coverage in the amounts listed below:

\$500,000 per occurrence for bodily injury
\$100,000 per occurrence for property damage

The Town of Somers will provide the Towns of Lewisboro and North Salem with certificates of insurance in like amounts and naming each as an additional insured with respect only to the activities at the congregate site.

If transportation is furnished by the Town of Lewisboro or the Town of North Salem, that town will provide proof of existing Automobile Liability Insurance coverage in the amounts listed below and in which the Town of Somers is named as an additional insured with respect to the Nutrition Program:

\$1,000,000 per occurrence for bodily injury
\$ 100,000 per occurrence for property damage

Nothing arising out of this agreement shall create or give to any third parties a claim or right of action.

The Town of Lewisboro agrees to pay the Town of Somers the sum of \$19,124 and the Town of North Salem agrees to pay the Town of Somers the sum of \$30,052 as indicated in the schedule below:

	<i>III-C-1</i>	<i>S.N.A.P</i>	<u><i>Total</i></u>
<i>Lewisboro</i>	<i>\$ 0</i>	<i>\$19,124</i>	<i>\$19,124</i>
<i>North Salem</i>	<i>\$5312</i>	<i>\$24,740</i>	<i>\$30,052</i>
<i>Somers</i>	<i>\$81,842</i>	<i>\$120,849</i>	<i>\$202,691</i>

It is further understood that the attendance from each town impacts the cash amounts provided for in this Agreement.

In the event extraordinary and unanticipated expenses are incurred by the Nutrition Program, these expenses will be apportioned among the three towns according to

percentage of attendance as indicated in the attached schedule for both the III-C-1 and S.N.A.P. programs.

The period of time covered by this agreement is from January 1, 2019 to December 31, 2019.

Rick Morrissey, Town Supervisor
Town of Somers

Peter Parsons, Town Supervisor
Town of Lewisboro

Warren Lucas, Town Supervisor
Town of North Salem