

JOSEPH P. PEDI
Town Clerk, 1496 Route 300
Town of Newburgh, New York 12550
Telephone 845-564-4554

WORKSHOP MEETING AGENDA
Monday, July 26, 2021
7:00 p.m.

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE TO THE FLAG**
- 3. MOMENT OF SILENCE**
- 4. CHANGES TO AGENDA**
- 5. APPROVAL OF AUDIT**
- 6. ENGINEERING DEPARTMENT: Hammond Subdivision Stormwater Erosion Control**
- 7. ANIMAL CONTROL: T-94 Withdrawal**
 - A. First Payment to Flannery Animal Hospital**
 - B. Second Payment to Flannery Animal Hospital**
- 8. ACCOUNTING DEPARTMENT: Budget Transfer**
- 9. RESOLUTION: Orange County Transportation**
- 10. FLEET MAINTENANCE DEPARTMENT: Approval to Purchase Rotary Lift**
- 11. ETHICS BOARD REAPPOINTMENTS (Terms Expire July 31, 2021):**
 - A. David A. Violante**
 - B. Karl E. Najork**
- 12. ZONING: Placement of 5G Wireless Facilities on Town Roads**
- 13. ADJOURNMENT**

GJP: jpp
First Revision
July 23, 2021 at 8:15 am



CONSULTING ENGINEERS, D.P.C.

MICHAEL J. LAMOREAUX, P.E. (NY, NJ, PA, VT, VA & CT)
MICHAEL W. WEEKS, P.E. (NY, NJ & PA)
LYLE R. SHUTE, P.E., LEED-AP (NY, NJ, PA)
PATRICK J. HINES

6
Main Office
33 Airport Center Drive
Suite 202
New Windsor, New York 12553

(845) 567-3100
fax: (845) 567-3232
e-mail: mheny@mhepc.com

Principal Emeritus:
RICHARD D. McGOEY, P.E. (NY & PA)

15 July 2021

Town of Newburgh
1496 Route 300
Newburgh, NY 12550

ATTENTION: GILBERT PIAQUADIO, SUPERVISOR
SUBJECT: HAMMOND SUBDIVISION (2020-08)
SECTION 1, BLOCK 1, LOT 63.23
PRIVATE ROAD/STORMWATER EROSION SEDIMENT CONTROL
COST ESTIMATE

Dear Supervisor Piaquadio:

This office has reviewed a cost estimate prepared by Jonathan Cella, P.E. for the storm drainage improvements, erosion and sediment control and private road construction depicted on plans dated 1 November 2019 last revised 4 March 2021. The unit costs are based on the MHE spreadsheet provided to the applicant's representative.

Based on the above this office takes no exception to the Town Board accepting security in the amount of \$187,953.53 say \$188,000.00. Bond estimate prepared by Jonathan Cella, P.E. is attached for your use. An initial escrow deposit of \$4,000.00 should be provided by the applicant in accordance with Section 104-2G (1). This action requires Town Board approval for the establishment of the security amount of \$188,000.00 and an Inspection Fee initial deposit of \$4,000.00.

Please feel free to contact the undersigned should you have any questions or comments regarding this matter.

Very Truly Yours,

McGoey, Hauser & Edsall
Consulting Engineers, D.P.C

Patrick J. Hines
Principal

PJH/kbw

HAMMOND SUBDIVISION

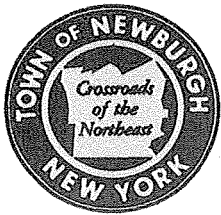
July 11, 2021

PRIVATE ROAD AND STORMWATER MANAGEMENT COST ESTIMATE

CRONK ROAD (S/B/L: 1-1-63.23)

TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK

	QUANTITY	UNITS	UNIT COST	UNITS	UNIT COST	UNITS	EXTENDED COST
EROSION AND SEDIMENTATION CONTROL							
STABILIZED CONSTRUCTION ENTRANCE	1	EACH	\$ 2,000.00			EACH	\$ 2,000.00
SILT FENCE	1500	LINEAR FEET	\$ 4.85			LINEAR FEET	\$ 7,275.00
EROSION CONTROL	1	ACRES	\$ 2,445.00			ACRES	\$ 2,445.00
CLEARING AND GRADING							
CLEARING AND GRUBBING	2	ACRES	\$ 7,995.00			ACRES	\$ 15,990.00
GRADING	9500	SY	\$ 2.50			SY	\$ 23,750.00
ROAD CONSTRUCTION							
SUBBASE	1700	SY	\$ 26.75			SY	\$ 45,475.00
DENSE BINDER	1700	SY	\$ 0.75			SY	\$ 283.33
DRAINAGE							
STORM WATER PONDS	1	EACH	\$ 2,500.00			EACH	\$ 2,500.00
CATCH BASINS	7	EACH	\$ 3,600.00			EACH	\$ 25,200.00
MANHOLE	2	EACH	\$ 3,600.00			EACH	\$ 7,200.00
STORMWATER PIPING (18" HDPE)	850	LINEAR FEET	\$ 52.00			LINEAR FEET	\$ 44,200.00
RIP RAP END SECTIONS	1	EACH	\$ 535.00			EACH	\$ 535.00
ROADSIDE SWALES	1200	LINEAR FEET	\$ 9.25			LINEAR FEET	\$ 11,100.00
						TOTAL =	\$ 187,953.33



TOWN OF NEWBURGH ANIMAL CONTROL & SHELTER

645 GIDNEY AVE. NEWBURGH, NY 12550

(845)561-3344

FAX: (845) 561-2220

To: Town Board

From: Tracey Carvell, Animal Control

Subject: Authorization to pay Vet Services Utilizing T-94 Account

Date: 7/19/21

I am requesting authorization to use the T-94 account to pay for Vet service:

*Totaling: \$ 67.20

Feline: \$

Canine: \$ 67.20

TOWN OF NEWBURGH
 1496 ROUTE 300
 NEWBURGH, N.Y. 12550

Order No.

DO NOT WRITE IN THIS BOX

VOUCHER

DEPARTMENT TONAC ^{ID#} 58907

CLAIMANT'S NAME AND ADDRESS
VCA Flannery Animal Hospital
789 Little Britain Road
New Windsor, NY 12553

TERMS July 2021 voucher

Date Voucher Received		FUND - APPROPRIATION	AMOUNT		VOUCHER NO.
		TOTAL			
Abstract No.					
Vendor's Ref. No.					

Date	Quantity	Description of Materials or Services	Unit Price	Amount
7-4-21	1	INU* 834988844 (7-3-2021) (F) mixed breed white		67.20
COPY				
			TOTAL	<u>67.20</u>

(See Instructions on Reverse Side)

I, Jean Tobin **CLAIMANT'S CERTIFICATION**
 certify that the above account in the amount of \$ 67.20
 is true and correct; that the items, services and disbursements charged were rendered to or for the municipality on the dates stated; that no part has been paid or satisfied; that taxes, from which the municipality is exempt, are not included; and that the amount claimed is actually due.

7-14-21 Jean Tobin Acct Manager
 DATE SIGNATURE TITLE

(Space Below for Municipal Use)

DEPARTMENT APPROVAL

The above services or materials were rendered or furnished to the municipality on the dates stated and the charges are correct.

7/18/21
 DATE AUTHORIZED OFFICIAL

APPROVAL FOR PAYMENT

This claim is approved and ordered paid from the appropriations indicated above.



Flannery Animal Hospital | Date: 7/7/2021 at 06:49 | Invoice: 834988844 | Cashier: Jean T

Client
Town Of Newburgh 2021 Animal Control (#58907)

645 Gidney Ave
Newburgh, NY 12550

Patient
Mixed Breed 7-3-2021 (#137480)
Species: Canine (Mixed Breed)
Sex: Female | Color: White
Birth: | Age: | Weight:



Detailed Visit Information

Date	Description	Qty	Price	Tax	Total Price
7/4/2021	Boarding Animal Control	1.00	\$33.60	\$0.00	\$33.60
7/5/2021	Boarding Animal Control	1.00	\$33.60	\$0.00	\$33.60
7/6/2021	Boarding Go Home Day	1.00	\$0.00	\$0.00	\$0.00

Subtotal: \$67.20

A Message from VCA

VCA Flannery Animal Hospital is proud to announce we are reopening 24/7/365 Emergency Services beginning April 2, 2021!

Invoice Summary

Patient Name	Total Price	Total Tax	Total Due
Mixed Breed 7-3-2021	\$67.20	\$0.00	\$67.20

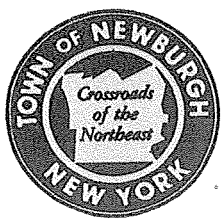
	Prev Balance:	
	Total Due:	\$67.20



For information on how we collect and use information about you and your pet, and how you may opt-out of some uses, please see our Privacy Policy at vcahospitals.com/privacy-policy.

Thank you for trusting us with your pet's care. Your friends at VCA Flannery Animal Hospital PC.

7B



TOWN OF NEWBURGH ANIMAL CONTROL & SHELTER

645 GIDNEY AVE. NEWBURGH, NY 12550

(845)561-3344

FAX: (845) 561-2220

To: Town Board

From: Tracey Carvell, Animal Control

Subject: Authorization to pay Vet Services Utilizing T-94 Account

Date: 7/22/21

I am requesting authorization to use the T-94 account to pay for Vet service: FAH

*Totaling: \$ 155.90

Feline: \$

Canine: \$ 155.90

TOWN OF NEWBURGH

1496 ROUTE 300
NEWBURGH, N.Y. 12550

VOUCHER

DEPARTMENT

TB NAC # 58907

CLAIMANT'S
NAME
AND
ADDRESS

VCA Flannery Animal Hospital
789 Little Britain Road
New Windsor, NY 12553

TERMS

June 2021 vouchers

Order No.

DO NOT WRITE IN THIS BOX

Date Voucher Received		VOUCHER NO.
FUND - APPROPRIATION	AMOUNT	
T-94		
TOTAL		
Abstract No.		
Vendor's Ref. No.		

Date	Quantity	Description of Materials or Services	Amount
6-15-21	1	INVT 834 984 171 6-15-21 GRAY PIT	33.00
6-20-21	1	INVT 834 987 108 2021-6-19 Wolfhound mix (m)	122.30
(See Instructions on Reverse Side)			
TOTAL			155.90

CLAIMANT'S CERTIFICATION

I, JEAN Tobin, certify that the above account in the amount of \$ 155.90 is true and correct; that the items, services and disbursements charged were rendered to or for the municipality on the dates stated; that no part has been paid or satisfied; that taxes, from which the municipality is exempt, are not included; and that the amount claimed is actually due.

7-2-21
DATE

Jean Tobin
SIGNATURE

Acct. Manager
TITLE

(Space Below for Municipal Use)

DEPARTMENT APPROVAL

The above services or materials were rendered or furnished to the municipality on the dates stated and the charges are correct.

7/22/21
DATE

[Signature]
AUTHORIZED OFFICIAL

APPROVAL FOR PAYMENT

This claim is approved and ordered paid from the appropriations indicated above.



VCA Flannery Animal Hospital PC
 789 Little Britain Rd. | New Windsor, NY 12553 | (845) 565 - 7387

Dr. Stonefield | Date: 6/16/2021 at 10:31 | Invoice: 834984171 | Cashier: Jean T

Client

Town Of Newburgh 2021 Animal Control (#58907)

645 Gidney Ave
 Newburgh, NY 12550

Patient

6-15-21 Gray Pit (#136947)

Species: Canine (Terrier, Pit Bull)

Sex: | Color: Gray

Birth: | Age: | Weight: 70.2 lb

Detailed Visit Information

Date	Description	Qty	Price	Tax	Total Price
6/15/2021	Boarding Animal Control	1.00	\$33.60	\$0.00	\$33.60
6/16/2021	Boarding Go Home Day	1.00	\$0.00	\$0.00	\$0.00

Subtotal: \$33.60

A Message from VCA

VCA Flannery Animal Hospital is proud to announce we are reopening 24/7/365 Emergency Services beginning April 2, 2021!

Invoice Summary

Patient Name	Total Price	Total Tax	Total Due
6-15-21 Gray Pit	\$33.60	\$0.00	\$33.60

	Total Due:	\$33.60
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COPY

For information on how we collect and use information about you and your pet, and how you may opt-out of some uses, please see our Privacy Policy at vcahospitals.com/privacy-policy.

Thank you for trusting us with your pet's care. Your friends at VCA Flannery Animal Hospital PC.



VCA Flannery Animal Hospital PC
789 Little Britain Rd. | New Windsor, NY 12553 | (845) 565 - 7387

Dr. Longo | Date: 6/29/2021 at 13:49 | Invoice: 834987108 | Cashier: Jean T

Client

Town Of Newburgh 2021 Animal Control (#58907)

645 Gidney Ave
Newburgh, NY 12550

Patient

2021-6-19 Wolfhound Mix (#137092)

Species: Canine (Irish Wolfhound; Alaskan Malamute, Mix)

Sex: Male Intact | Color:

Birth: | Age: | Weight:

Detailed Visit Information

Date	Description	Qty	Price	Discount	Tax	Total Price
6/20/2021	Rabies Vaccine 1yr Canine	1.00	\$43.00	-\$21.50	\$0.00	\$21.50
	Boarding Animal Control	1.00	\$33.60		\$0.00	\$33.60
6/21/2021	Boarding Animal Control	1.00	\$33.60		\$0.00	\$33.60
6/22/2021	Boarding Animal Control	1.00	\$33.60		\$0.00	\$33.60
6/23/2021	Boarding Go Home Day	1.00	\$0.00		\$0.00	\$0.00

Subtotal: \$122.30

Discounts	Shelters/PetStore	-\$21.50
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A Message from VCA

VCA Flannery Animal Hospital is proud to announce we are reopening 24/7/365 Emergency Services beginning April 2, 2021!

Invoice Summary

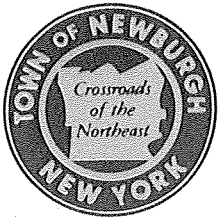
Patient Name	Total Price	Total Discount	Total Tax	Total Due
2021-6-19 Wolfhound Mix	\$143.80	-\$21.50	\$0.00	\$122.30

	Total Due:	\$122.30
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Thank you for trusting us with your pet's care. Your friends at VCA Flannery Animal Hospital PC.



TOWN OF NEWBURGH

8

1496 Route 300, Newburgh, New York 12550

RONALD E. CLUM, CPA
ACCOUNTANT

845-564-5220

Fax: 845-566-9461

E-Mail: rclumaccountant@townofnewburgh.org

TO: TOWN BOARD
FROM: RONALD E CLUM
DATE: JULY 13, 2021
RE: 2022 BUDGET TRANSFER

I would like authorization for two budget transfers for expenditures that were not budgeted for in the 2021 budget.

One was for painting and major repairs at the Justice Court Building in the amount of \$25,825.00 and the other for the air conditioner purchase and installation in the town board room in the amount of \$21,000.00.

Please authorize a budget transfer from the contingency account (A-1990-5499) in the amount of \$46,825.00 to accounts A-1620-5200 (Buildings-Town Hall-Equipment) for \$25,825.00 and account A.1622-5474 (Buildings-PSB-Equipment) for \$21,000.

Thank you in advance for the authorization.



Rider Weiner & Frankel P.C.
ATTORNEYS & COUNSELORS AT LAW

MEMORANDUM

TO: HON. GILBERT J. PIAQUADIO, SUPERVISOR
TOWN BOARD MEMBERS

FROM: MARK C. TAYLOR, ATTORNEY FOR THE TOWN

RE: RESOLUTION OF TOWN BOARD AUTHORIZING
AGREEMENT TO PROVIDE TRANSPORTATION SERVICES
TO RESIDENTS AGED 60 AND OVER
OUR FILE NO. 800.1(B)() (2011); 800.1(B)() (2021)

DATE: JULY 23, 2021

P: 845.562.9100
F: 845.562.9126

655 Little Britain Road
New Windsor, NY 12553

P.O. Box 2280
Newburgh, NY 12550

ATTORNEYS

David L. Rider
Charles E. Frankel
Michael J. Matsler
Mark C. Taylor
Deborah Weisman-Estis
M. Justin Rider
Donna M. Badura

M. J. Rider
(1906-1968)
Elliott M. Weiner
(1915-1990)

COUNSEL

Stephen P. Duggan, III
John K. McGuirk
(1942-2018)

OF COUNSEL

Craig F. Simon
Irene V. Villacci

As the Board members may recall the Board acted in March on a three month extension and amendment to the Vendor Services Agreement with Orange County to provide Transportation Services to the Elderly. Enclosed is the new Agreement for Vendor Services which replaces the previous agreement which had been extended over several years following the initial 2016-17 term, together with the supporting exhibits and documents. The Agreement provides for the County's payment of a reimbursement not to exceed \$16,965, with a Town match of \$5,655 and anticipated income of \$1,500. Also enclosed please find the following resolution pertaining to the Vendor Services Agreement with Orange County for transportation services:

RESOLUTION OF TOWN BOARD AUTHORIZING AGREEMENT WITH THE COUNTY OF ORANGE TO PROVIDE TRANSPORTATION SERVICES TO RESIDENTS AGED 60 AND OVER

The Agreement provides for a term commencing July 1, 2021 and ending March 31, 2022.

Should you have any questions or concerns, please do not hesitate to contact me.

MCT/sel
Enc.

cc: Town Clerk Joseph P. Pedi (via e-mail)
James Presutti, Commissioner of Parks, Recreation and Conservation (via e-mail)
Ronald Clum, Town Accountant (via e-mail)

At a meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300 or by videoconference pursuant to the Governor's Executive Orders, in the Town of Newburgh, Orange County, New York on the ___th day of July, 2021 at 7:00 o'clock p.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor

Elizabeth J. Greene, Councilwoman

Paul I. Ruggiero, Councilman

Scott M. Manley, Councilman

Anthony R. LoBiondo, Councilman

RESOLUTION OF TOWN BOARD
AUTHORIZING AGREEMENT WITH
THE COUNTY OF ORANGE TO PROVIDE
TRANSPORTATION SERVICES FOR
RESIDENTS AGED 60 AND OVER

Councilman/woman _____ presented the following resolution which was seconded by Councilman/woman _____.

WHEREAS, the Town of Newburgh has submitted and the County of Orange has accepted a proposal to provide transportation services to residents aged 60 and over; and

WHEREAS, the Town of Newburgh is in agreement with the County of Orange findings for the needs and administration of such services, and

WHEREAS, the County of Orange has forwarded an Agreement for Vendor Services between the County and Town, having a July 1, 2021-March 31, 2022 Term, pursuant to which the Town will provide the services; and

WHEREAS, it is required by the County of Orange that the Town Board approve the Agreement for Vendor Services effective as of July 1, 2021 as agreed upon with the Orange County Office for the Aging, its form and manner of execution, and

NOW, THEREFORE BE IT RESOLVED, that we the Town Board of the Town of Newburgh approve the Agreement for Vendor Services with the County of Orange to provide transportation services to residents aged 60 and over as to its form and manner of execution and authorizes the Supervisor to sign and deliver the agreement and/or ratifies his signature thereon.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Elizabeth J. Greene, Councilwoman voting _____

Paul I. Ruggiero, Councilman voting _____

Scott M. Manley, Councilman voting _____

Anthony R. LoBiondo, Councilman voting _____

Gilbert J. Piaquadio, Supervisor voting _____

The resolution was thereupon declared duly adopted.



AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 20____ (this "Agreement"), by and between the **COUNTY OF ORANGE**, a municipal corporation, hereinafter referred to as the "COUNTY," a County of the State of New York, with principal offices at 255-275 Main Street, Goshen, New York 10924; and Town of Newburgh, a municipal corporation with principal offices at 311 Route 300, Newburgh, New York 12550, hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (collectively the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the COUNTY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the County Executive of the COUNTY after consultation with the COUNTY Department head responsible for the oversight of this Agreement (hereinafter "Department Head").

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES beginning July 1, 2021 and ending March 31, 2022.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES may be modified by mutual written agreement, the COUNTY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the COUNTY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule B, and prepared in such form and supported by such documents as the COUNTY may reasonably require. The COUNTY will pay the proper amounts due VENDOR within sixty (60) days after

receipt by the COUNTY of an invoice, and if the invoice is objectionable, will notify VENDOR, in writing, of the COUNTY's reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not to exceed cost of \$16,965.00 has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the County Executive of the COUNTY, evidenced only by a written Change Order or Addendum to this Agreement, after consultation with the Department Head. It is specifically agreed to by VENDOR that the COUNTY will not be responsible for any additional cost or costs in excess of the above-noted not-to-exceed cost if the COUNTY's authorization by the County Executive is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

ARTICLE 4. EXECUTORY CLAUSE

The COUNTY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further

represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the COUNTY to enter into this Agreement and the COUNTY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the COUNTY, nor any person whose salary is payable, in whole or in part, by the COUNTY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person (1) if required by the Orange County Ethics Law as amended from time to time, to submit a Disclosure form to the Orange County Board of Ethics, amends such Disclosure Form to include their interest in this Agreement, or (2) if not required to complete and submit such a disclosure form, said person must either voluntarily complete and submit said Disclosure form disclosing their interest in this Agreement or seek a formal opinion from the Orange County Ethics Board as to whether or not a conflict of interest exists.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and

VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment to or to take any other action provided for by law in equity or, pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the COUNTY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quote, does not constitute, without more, a disclosure within the meaning of this Article 7.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and

shall not act as agent, or be an agent, of the COUNTY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR's personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the COUNTY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUB-CONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the County Executive of the COUNTY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the COUNTY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the COUNTY and if so terminated, the COUNTY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the COUNTY except so much thereof as may be necessary to pay VENDOR's employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This Agreement may be assigned by the COUNTY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. COUNTY, or any State and/or Federal auditors, and any other persons duly authorized by the COUNTY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE COUNTY AND OTHERS

All invoices presented for payment to be made hereunder, and the books, records and accounts upon which said invoices are based are subject to audit by the COUNTY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the COUNTY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the COUNTY upon request. All books, forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the COUNTY, the State of New York, the federal government, and/or other persons duly authorized by the COUNTY. Such audits may include examination and review of the source and application of all funds whether from the COUNTY and State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, a

Worker's Compensation insurance, liability insurance covering personal injury and property damage, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the COUNTY who have been fully informed as to the nature of the SERVICES to be performed. Except for Worker's Compensation and professional liability, the COUNTY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the COUNTY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the COUNTY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR's liability under this Agreement.

<u>Type of Coverage</u>	<u>Limit of Coverage</u>
Worker's Compensation	Statutory
Disability	Statutory
Employer's Liability	\$500,000 ea. accident \$500,000 disease ea. employee \$500,000 disease policy limit
Automobile Liability (Incl. Bodily Injury & Property Damage)	\$1,000,000 aggregate \$1,000,000 each occurrence
Comprehensive General Liability (Incl. Contractual Liability, Bodily Injury & Property Damage)	\$1,000,000 aggregate \$1,000,000 each occurrence
Professional Liability (If commercially available for your profession)	\$1,000,000 aggregate \$1,000,000 each claim

VENDOR will provide COUNTY with certificates of insurance evidencing VENDOR's compliance with these requirements prior to execution of this Agreement by COUNTY.

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without

right of contribution of any other insurance carried by or on behalf of the COUNTY with respect to its interests, (ii) it shall not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the COUNTY, directed to the COUNTY's Risk Management Division and the Department Head and the COUNTY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR's start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. If the insurance is terminated for any reason and/or for at least three (3) years following final acceptance of the SERVICES, VENDOR will maintain an extended reporting provision and/or similar insurance for the period of performance plus three (3) years from the date of such termination or final acceptance.

C. Immediate notice shall be given to the COUNTY through the Department Head and the COUNTY's Risk Management Division of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the COUNTY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed pursuant to this Agreement which the COUNTY, or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the COUNTY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment representation, subcontract, assignment or agency, or arising out of VENDOR's negligence, fault, act or omission, then the COUNTY shall have the right to withhold further payments hereunder, for the purpose of set-off, in sufficient sums to cover the said claim or action. The rights and remedies of the COUNTY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF COUNTY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to COUNTY property, including property and equipment leased by the COUNTY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such COUNTY property is lost or damaged, except for normal wear and tear, then the COUNTY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the COUNTY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such COUNTY property described in this Article 15.

The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. TERMINATION

The COUNTY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (1) for the COUNTY's convenience, (2) upon the failure of VENDOR to comply with any of the terms or conditions of this

Agreement, or (3) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all COUNTY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the COUNTY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the COUNTY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any COUNTY directive concerning the disposition thereof.

In the event the COUNTY terminates this Agreement in whole or in part, as provided in this Article 16, the COUNTY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the COUNTY, any SERVICES procured by the COUNTY to complete the SERVICES herein will be charged to VENDOR and/or set off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of VENDOR's breach of this Agreement or failure to perform in accordance with applicable standards, and the COUNTY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the COUNTY from VENDOR is determined.

The rights and remedies of the COUNTY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 17. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by judgment of any court of competent jurisdiction or administrative means shall constitute and operate as a

general release to the COUNTY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 18. SET-OFF RIGHTS

The COUNTY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the COUNTY's right to withhold for the purposes of set-off any monies otherwise due to VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the COUNTY, including any agreement or contract for a term commencing prior to or after the term of this Agreement or (iii) from the COUNTY by operation of law, the COUNTY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the COUNTY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the County Executive of the COUNTY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 21. CURRENT OR FORMER COUNTY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any COUNTY employee or former COUNTY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the COUNTY without the express written permission of the COUNTY. This limitation period covers the preceding three (3) years or longer if the COUNTY employee or former COUNTY employee

has or may have an actual or perceived conflict of interests due to their position with the COUNTY.

For a breach or violation of such representations or warranties, the COUNTY shall have the right to annul this Agreement without liability, entitling the COUNTY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if affected, shall not constitute the sole remedy afforded the COUNTY for such falsity or breach, nor shall it constitute a waiver of the COUNTY's right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 22. ENTIRE AGREEMENT

The rights and obligation of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 23. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the County Executive of the COUNTY, after consultation with the Department Head, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

ARTICLE 24. SERVICE OF PROCESS

VENDOR shall be properly registered to do business in the State of New York. Regardless of the propriety or legality of registration status, as a condition of contract, the VENDOR shall agree to service of process as follows: In addition to the methods of service allowed by the State of New York

Civil Practice Law and Rules, VENDOR consents to service of process upon it by registered or certified mail, return receipt requested, to the address indicated in this Agreement. Service shall be complete upon VENDOR's actual receipt of process, or upon the COUNTY's receipt of the return by the United States Postal Service as refused or undeliverable. VENDOR shall immediately notify the COUNTY, in writing, via registered or certified mail, return receipt requested, of each change or address to which service of process can be made. Service by the COUNTY to the last known address shall be sufficient.

ARTICLE 25. SEXUAL HARASSMENT CERTIFICATION

Pursuant to State of New York State Finance Law §139-1, by execution of this Agreement, the VENDOR and the individual signing this Agreement on behalf of the VENDOR certifies, under penalty of perjury, that the VENDOR has and has implemented a written policy addressing sexual harassment prevention in the

workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of Section 201-g of the State of New York Labor Law. A model policy and training has been created by the New York State Department of Labor and can be found on its website at:

<https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

The COUNTY's policy against sexual harassment and other unlawful discrimination and harassment in the workplace can be found on the COUNTY's website at:

<https://www.orangecountygov.com/1137/Human-Resources>.

IN WITNESS THEREOF, the parties hereto have executed this Agreement to be effective as of the date set forth above.

COUNTY OF ORANGE

TOWN OF NEWBURGH

By: _____
Stefan ("Steven") M. Neuhaus
County Executive

By: _____
NAME: ~~Gil Piaquadio~~ Gilbert J. Piaquadio
TITLE: Supervisor

DATE: _____

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

The SERVICES that VENDOR has agreed to perform are set forth in the following documents, annexed hereto, the terms and conditions of which are hereby incorporated into and made part of this Agreement:

1. RFP-OFA04-21 issued May 12, 2021;
2. Section 2 of VENDOR'S proposal to RFP-OFA04-21 dated June 3, 2021 (the "Proposal"), which is superseded and replaced, in part, by the terms set forth on the annexed Exhibit A-1, which is incorporated by reference and made part of this Agreement; and
3. The Proposal (with the exception of Section 2, which has been replaced and superseded, in part, by Exhibit A-1 as set forth in Paragraph 3 above).

Nothing contained in the Proposal shall constitute a waiver to any other requirement of this Agreement or RFP-OFA04-21. In the event of any conflict or inconsistency between the Agreement itself and any other requirement in the attachments listed above, the conflict shall be resolved by giving precedence to the documents listed in the order above, with the earlier listed controlling over the latter; however, the most recent version of the Agreement, as may be amended by a subsequent written document executed by both parties, will ultimately be controlling.

SCHEDULE B**FEES AND EXPENSES**

This Schedule B contains the revised "UNITS OF SERVICE" and "TOTAL BUDGET/COST OF SERVICE" as set forth in Exhibit A-1 to this Agreement.

This Schedule B also contains the negotiated breakdown of funding sources which has been agreed upon by the COUNTY and VENDOR, and which replaces and supersedes any contrary breakdown of funding sources contained in the Proposal.

UNITS OF SERVICE	UNIT COST	COST OF SERVICE
2,010 units of Transportation	\$12.00	\$24,120.00
TOTAL BUDGET		\$24,120.00

The COUNTY and VENDOR agree that the sources utilized to fund the Total Budget of \$24,120.00 shall be as follows:

(a) Area Agency Funds – For the satisfactory provision of the SERVICES, the COUNTY will reimburse VENDOR in a total amount not to exceed \$16,965.00;

(b) Anticipated Income – Voluntary contributions in the amount of \$1,500.00 anticipated to be received during the term of this Agreement from those individuals who receive the SERVICES from VENDOR pursuant to this Agreement, which shall be retained by VENDOR and used to expand the SERVICES; and

(c) Subcontractor Funds – VENDOR shall contribute the sum of \$5,655.00 to the cost of the SERVICES after application of those voluntary contributions received from those individuals who receive the SERVICES.

Please Note - Vendor acknowledges and understands that the risk that the voluntary contributions actually received may be less than the \$1,500.00 projected on Schedule B to the Agreement shall be borne by Vendor.

EXHIBIT A-1

1. The Proposal requested reimbursement funding from the COUNTY in the amount of \$28,425.00. In response to the Proposal, the COUNTY offered reimbursement funding in an amount not to exceed \$16,965.00. VENDOR accepted the amount offered by COUNTY, which resulted in certain necessary revisions to Section 2 of the Proposal as follows:

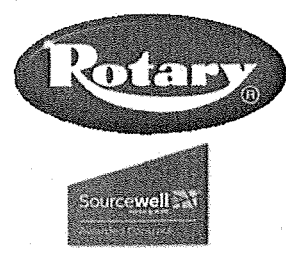
- (a) "UNITS OF SERVICE" for Transportation are now 2,010;
- (b) "TOTAL BUDGET/COST OF SERVICE" are now \$24,120.00
- (c) "ANTICIPATED INCOME" is now \$1,500.00;
- (d) "NET TOTAL" is now \$22,620.00;
- (e) "SUCONTRACTOR MATCH" is now \$5,655.00; and
- (f) "NET APPLICATION" is now \$16,965.00.

The revised amounts set forth in subparagraphs (a) through (f) above, hereby supersede and replace the amounts set forth in Section 2 of the Proposal.

Rotary Lift

NYS State Equipment Quotation

Contract # PC67297



Quote # : 2021245
 Date: 4/13/2021
 Requested By: _____
 Quote Expires: 5/13/2021
 Payment Terms: 1/2%-15th,NET 30
 Warranty: 1yr. Parts & Labor

Prepared By: Christine Bilz

***If the completion of the installation is delayed more than one month due to governmental entity delays (i.e. electrical etc.), then Rotary can request partial payment for the portion of work completed (both equipment and installation).**

Note: Quote for equipment and installation.

Project Name: Town of Newburgh Member #79238

Model No.	Description	Unit Price Ea.	Qty.	Extended Price
RLP77	Double Scissor Fixed Pad Lift 7,700lb Capacity	\$ 9,771.75	1	\$ 9,771.75
XXX01CTT	Installation includes mechanical install with	\$ 1,350.00	1	\$ 1,350.00
	labor and travel			
	*does not include uninstalling any existing lifts			
	*does not include concrete, air/electric, parts or			
	shimming or lag bolts as required			
	*does not include additional trips or days due to			
	customer's request			
	*does not include any unforeseen inground ob-			
	stacles such as (water, sand, sludge, excessive			
	rock, inground utilities, contaminated soil or the			
	removal of etc.)			
	*does not include any applicable sales tax			
Freight	Pre Paid By Rotary			

Total Price: \$ 11,121.75

ADDITIONAL TERMS AND CONDITIONS: By submitting a purchase order to Vehicle Service Group, LLC. (VSG), customer accepts and agrees to these terms and conditions as additional terms to the existing agreement between the parties referenced on the face of this quotation (Existing Agreement), notwithstanding anything to the contrary contained therein. All additional or different terms and conditions contained in Customer's purchase order are hereby rejected. No additional or different terms or conditions, or any modifications, changes, or amendments to these terms of the existing agreement shall be

binding on VSG, unless expressly accepted by VSG in writing.

DISCLAIMER: Notwithstanding anything to the contrary in the Existing Agreement, VSG shall not be liable for any loss, damage or additional costs arising from unforeseen conditions affecting installation, including but not limited to contaminated soil, bed rock, in-floor heating system, high water conditions, or any othertype of in-ground conditions. Customer acknowledges and agrees that Customer shall be responsible for any additional costs due to such conditions, in addition to the installation price set forth herein.

DELAY: Notwithstanding anything to the contrary in the Existing Agreement, if delivery of the equipment or completion of the work is delayed by more than thirty (30) days due to the acts or ommission of Customer or any third party other than VSG or its sub-contractors, VSG may require Customer to render payment for equipment manufactured or delivered, and portions of the work completed, within thirty (30) days from the date of VSG's invoice, in the amounts set forth in such invoice.

*Cancelled orders are subject to 20% restocking fee

NYS Contract: PC67297
CAGE #: 7K311
Tax ID #: 90-0501347
DUNS #: 00-638-2634

Rotary Lift
2700 Lanier Dr.
Madison, IN 47250
Chris Bilz, Government Sales Leader
800.445.5438 x5655
800.578.5438

~~NOA~~

11A

David A. Violante
53 East Road
Wallkill, NY 12589
(845) 542-3949

Joseph Pedi
Town Clerk, Town of Newburgh
1496 Route 300
Newburgh, NY 12550

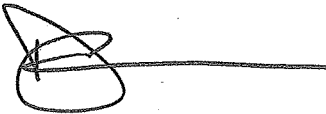
June 14, 2021

RE: Ethics Committee Term

Joseph,

Thank you for reaching out to me about my Ethics Committee Term ending on July 31, 2021. I am interested in being reappointed if that pleases the Town. Please feel free to reach out if you need anything else from me.

Thank you in advance,

A handwritten signature in black ink, consisting of a stylized, overlapping loop followed by a long horizontal line extending to the right.

David A. Violante

Karl E Najork
587 Grand Avenue
Newburgh NY 12550

NOB

11B

July 1, 2021

Town on Newburgh
Supervisor Gil Piaquadio,
Members of the Town Board

Dear Gil,

I would be honored to be considered to continue serving on the town ethics board.

Sincerely,



Karl Najork

Amend Your Local Zoning Code Now, or 5G Facilities are going to be Sprouting up on Front Lawns in Your Town

I received the first call of this type a decade ago. In 2011, my clients, the DeMarco family, came home to find workmen doing something on their front lawn. When they approached the workers, they allegedly lied and told the family that a new streetlight was going to be installed in front of their house, and the wiring would go underneath their lawn because of a utility easement or public right-of-way across their property.

Two days later, the family came home to find a 40-foot cell tower on their front lawn.¹

According to news reports, the tower had been built by a site developer, *Next G Networks*, a company that is now apparently owned by *Crown Castle*.²

Within the context of the current

1 See <https://newyork.cbslocal.com/2011/02/03/cell-tower-on-front-lawn-surprises-long-island-couple/>

2 See [https://investor.crowncastle.com/news-releases/news-release-details/crown-castle-completes-acquisition-nextg-networks#:~:text=HOUSTON%20%2C%20April%2010%2C%202012%20,\(of%20outdoor%20distributed%20antenna%20systems.](https://investor.crowncastle.com/news-releases/news-release-details/crown-castle-completes-acquisition-nextg-networks#:~:text=HOUSTON%20%2C%20April%2010%2C%202012%20,(of%20outdoor%20distributed%20antenna%20systems.)

5G rollout, the irresponsible placement of wireless facilities is far worse than ever before. People are now waking every day to find a wireless facility installed on their front lawn,³ side lawn, directly in front of their front door,⁴ 10 feet from their daughter's bedroom window,⁵ or 8 feet from a kitchen window.

Unfortunately, most of this is occurring because local governments have been falsely led to believe that they possess far less power to control the placement of wireless facilities than those which the United States Congress explicitly preserved to them, when it enacted the Telecommunications Act of 1996 (TCA).

Under the TCA, Congress explicitly preserved to state and local governments the "General Authority" to regulate the placement, installation, and modification of wireless facilities.⁶ This includes both cell towers and the small cells, and Distributed Antenna (DAS) Systems that are now being installed at a blinding pace as part of the current 5G rollout.

Unfortunately, most local

3 See <https://abc13.com/houston-homes-seeing-5g-boxes-placed-without-homeowners-being-notified-not-of-box-placement-verizon-home/10039722/#:~:text=The%20box%20placed%20in%20their,creates%20a%20ground%20furniture%20house> and <https://www.komando.com/technology/verizon-5g-utility-boxes/775669/>

4 See <https://weartv.com/news/local/more-5g-woes-pole-installed-feet-away-from-residents-front-door>

5 See <https://padailypost.com/2019/07/10/att-wants-to-put-small-antenna-10-feet-from-girls-bedroom-window/>

6 See 47 U.S.C.A. §332(c)(7) (A).

governments in New York are ill-equipped to prevent the irresponsible placement of such facilities, because most have been misled to believe, in many cases by their own municipal attorneys, that federal law has "tied their hands."

Nothing could be further from the truth.

Under the Telecommunications Act of 1996, local governments still have broad power to control the placement of wireless facilities.

The key to exercising that power is simple.

All it requires is that the local government: (a) enact a well-drafted local zoning ordinance to impose permit requirements for such facilities, (b) codify legislative intent provisions and standards for the granting of such permits, and, of greatest import, (c) include procedural guidelines for their local planning boards and zoning boards of appeals to follow, so when they decide applications for wireless facilities, they comply with the additional procedural requirements imposed upon them by the TCA.

Local zoning laws, *alone*, create the grounds upon which such permit applications may lawfully be denied.

For more than two decades, smart local governments have denied applications for the irresponsible placement of wireless facilities based upon grounds including, but not limited to, adverse aesthetic impacts, reduction in local property values, and lack of sufficient fall zones, among others.

Not only do local governments possess the power to deny applications based upon grounds such as these, but local boards also possess the power to decide what evidence they will require an applicant to produce and what weight they will afford any such evidence.

Of critical import, they also possess the power to make factual determinations, not only under their local code but also under the TCA, and they must exercise that power if they want to assert *actual control* over the placement of wireless facilities within their town or village.

Where, for example, an applicant argues that a local government "must" grant an application because the applicant claims that it suffers from a significant gap in personal wireless service and that its proposed wireless facility is the least intrusive means of remedying such gap, it is up to the **board**, *not the applicant*, to decide whether or not the applicant has proven either of those things.

It is only when local boards are not made aware that they must make these TCA factual determinations, or when they violate procedural requirements imposed upon them under the TCA because they didn't

Local zoning laws, alone, create the grounds upon which such permit applications may lawfully be denied.

know those requirements existed, that local governments find themselves getting sued after they denied an application for a new wireless facility.

There is simply no reason to permit the irresponsible placement of wireless facilities – and even less reason for a town or village to place itself in a position of being sued under the TCA – simply because it had failed to provide its local board with guidance to enable it to render a decision

without violating the TCA.

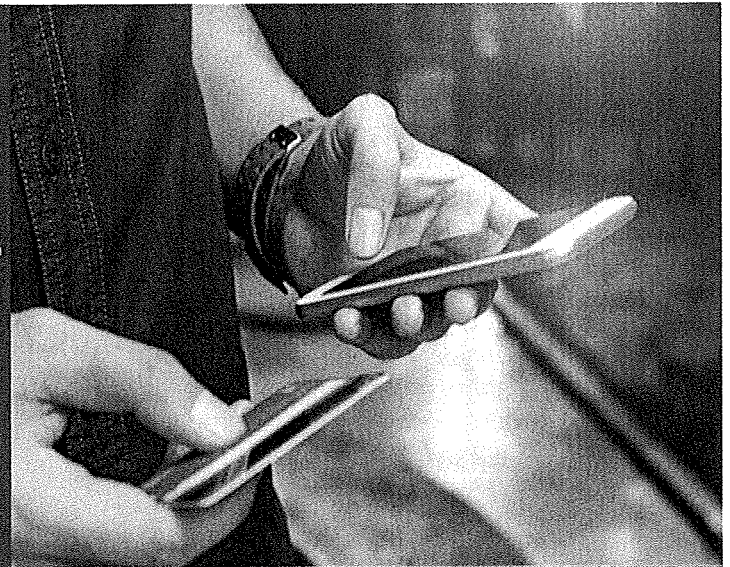
So get someone who actually knows what they are doing to amend your local zoning code now, or be prepared to entertain a chorus of complaints from your constituents, when they come home to find new wireless facilities having been installed on their front lawns or just outside their child's bedroom window, without warning. □

Andrew J. Campanelli

worldpay
from FIS

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Whether you take payments in-store, online or on a mobile device, solving for customer needs is at the forefront of our solutions. Our contract with NY State's OGS allows any government municipality to utilize the contract with preferred pricing. No RFP required. No additional account fees added.

Connect / Experience / Grow / Pay / Protect

Andrew Finck / andrew.finck@fisglobal.com / 914.450.4545 / NYS Contract #23111

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