



The Town of East Greenbush

225 Columbia Turnpike, Rensselaer, New York 12144

TOWN BOARD MEETING AGENDA

Wednesday, January 16, 2013

Call to Order
Pledge to the Flag
Town Board Meeting:

7:00 PM

Members of Town Board

Present

Absent

Supervisor Langley
Councilperson Matters
Councilperson O'Brien
Councilperson Malone
Councilperson Mangold

Communications / Announcements / Reports

Open Public Privilege: NOTE: Each speaker shall state name and address prior to addressing the Board and shall be granted the floor for up to five minutes. The Board thanks everyone in attendance for their understanding and also for their desire to actively participate in the decision-making process locally.

Resolutions and Proposals by Town Board Members:

02-2013 A Resolution to Approve Meeting Minutes

WHEREAS, the minutes of Town Board meetings, as provided in § 106 of Article 7 of the New York Public Officers Law, shall be approved by the Board prior to them being finalized, deemed official and disseminated to the public by the Town Clerk; and

WHEREAS, that the minutes of the regular Town Board Meeting held on December 19, 2012; and

WHEREAS, the Town Board has reviewed these minutes and any necessary corrections have been made; now, therefore, be it

RESOLVED, that the minutes of the regular Town Board Meeting held on December 19, 2012, are hereby approved as submitted.

The foregoing Resolution was duly moved by Supervisor Langley and seconded by Councilperson Matters and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

03-2013 A Resolution to Approve Special Meeting Minutes

WHEREAS, the minutes of Town Board meetings, as provided in § 106 of Article 7 of the New York Public Officers Law, shall be approved by the Board prior to them being finalized, deemed official and disseminated to the public by the Town Clerk; and

WHEREAS, that the minutes of the special Town Board Meeting held on December 14, 2012, have been presented; and

WHEREAS, the Town Board has reviewed these minutes and any necessary corrections have been made; now, therefore, be it

RESOLVED, that the minutes of the special Town Board Meeting held on December 14, 2012, are hereby approved as submitted.

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson O'Brien and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

04-2013 A Resolution to Approve Meeting Minutes

WHEREAS, the minutes of Town Board meetings, as provided in § 106 of Article 7 of the New York Public Officers Law, shall be approved by the Board prior to them being finalized, deemed official and disseminated to the public by the Town Clerk; and

WHEREAS, that the minutes of the special Town Board Meeting held on December 20, 2012, have been presented; and

WHEREAS, the Town Board has reviewed these minutes and any necessary corrections have been made; now, therefore, be it

RESOLVED, that the minutes of the special Town Board Meeting held on December 20, 2012, are hereby approved as submitted.

The foregoing Resolution was duly moved by Councilperson Matters and seconded by Supervisor Langley and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

05-2013 A Resolution to Approve Organizational Meeting Minutes

WHEREAS, the minutes of Town Board meetings, as provided in § 106 of Article 7 of the New York Public Officers Law, shall be approved by the Board prior to them being finalized, deemed official and disseminated to the public by the Town Clerk; and

WHEREAS, that the minutes of the Organizational Town Board Meeting held on January 02, 2013, have been presented; and

WHEREAS, the Town Board has reviewed these minutes and any necessary corrections have been made; now, therefore, be it

RESOLVED, that the minutes of the special Organizational Town Board Meeting held on January 02, 2013, are hereby approved as submitted.

The foregoing Resolution was duly moved by Councilperson O'Brien and seconded by Supervisor Langley and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

06-2013 Appointment of Part-time Police Dispatchers

WHEREAS, the Town Board of the Town of East Greenbush seeks to retain the services of the part-time police dispatchers in the Town's Emergency Communications Center; and

WHEREAS, the Town Comptroller has certified that the provisions of this resolution were planned for in the 2013 Budget and will have no adverse impacts on the Town Finances; now therefore be it

RESOLVED, that the individuals listed and attached hereto, be and hereby are appointed to the position of part-time police dispatcher, consistent with all the terms and conditions of these positions as previously set forth by the Town Board, for a term to expire at the Town's next organizational meeting, or otherwise at the pleasure of the Town Board, and be it further

RESOLVED, that the Police Chief has the authority to hire additional part-time dispatchers as the need arises throughout the year, subject to approval of the Town Board, for a term to expire at the Town's next Organizational Meeting or otherwise at the pleasure of the Town Board, and be it further

RESOLVED, that the said part-time dispatchers are compensated at an hourly rate per the current East Greenbush Emergency Communications Association Labor Agreement.

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson Matters and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

07-2013 Appointment of a Full-time Police Dispatcher

WHEREAS, the Town Board is aware of the significant increase in call volume and related dispatch activity in the Town's 911 Communication Center; and

WHEREAS, the Town Board desires to maintain adequate professional staffing of the Communications Center; and

WHEREAS, the Town Board has received a recommendation from the Chief of Police to establish a position to meet this need; and

WHEREAS, the Town Comptroller has certified that the provisions of this resolution were planned for in the 2013 Budget and will have no adverse impacts on the Town Finances; and

WHEREAS, Gregory G. Forgea is presently a part-time dispatcher with the Town of East Greenbush Communications Center, and a full-time dispatcher with Guilderland Police, and has been found to be suitable and eligible for appointment to said position; now therefore be it

RESOLVED, that Gregory G. Forgea is hereby appointed to the position of Police Dispatcher/Communications Officer subject to the following stipulations:

- approval of a lateral transfer by Rensselaer County Civil Service and Albany County Civil Service;
- satisfactory review of pre-employment evaluation, including but not limited to background and security clearance and drug testing;
- confirmation the appointee has established and maintained a principal place of residence in Town within six (6) months of appointment; and
- said appointment is subject to a probationary period of six (6) months; and be it

FURTHER RESOLVED, that upon successful completion of these stipulations that this appointment shall be and hereby is made permanent.

The foregoing resolution was duly moved by Councilperson Mangold and seconding by Councilperson O'Brien and brought to a vote as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

08-2013 Schedule a Public Hearing to Consider a New Contract with the Best Luther Fire Company, Inc.

WHEREAS, the Town Comptroller has certified holding a Public Hearing shall pose no adverse impacts to the Town's finances; now therefore be it

RESOLVED, that the Town Board of the Town of East Greenbush, County of Rensselaer, State of New York, hold a Public Hearing on the 13th day of **February, 2013**, at **6:30PM**. In the evening of said day, at the Town Hall, 225 Columbia Turnpike, in said East Greenbush, New York, and the Best Luther Fire Company, Inc., which said agreement will include certain conditions as set forth in the proposed contract and the payment of the sum of **\$95,620** by the Town of East Greenbush to the Best Luther Fire Company, Inc. for such Fire protection.

The foregoing resolution was duly moved by Councilperson O'Brien and seconded by Supervisor Langley and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Malone | VOTED |

09-2013 Schedule a Public Hearing to Consider a New Contract with the Best Luther Fire Company, Inc., on behalf of the Third Avenue Fire Protection District, Inc.

WHEREAS, the Town Comptroller has certified holding a Public Hearing shall pose no adverse impacts to the Town's finances; now therefore be it

RESOLVED, that the Town Board of the Town of East Greenbush, County of Rensselaer, State of New York, hold a Public Hearing on the 13th day of **February, 2013**, at **6:45PM**. In the evening of said day, at the Town Hall, 225 Columbia Turnpike, in said East Greenbush, New York, and the Best Luther Fire Company, Inc., which said agreement will include certain conditions as set forth in the

proposed contract and the payment of the sum of **\$6,920** by the Town of East Greenbush to the Best Luther Fire Company, Inc. for such Fire protection.

The foregoing resolution was duly moved by Councilperson Matters and seconded by Councilperson Mangold and brought to a vote resulting as follows:

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|-----------------------|-------|
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

10-2013 Authorization to enter into Agreements for Sewer Services with Individuals/Entities

WHEREAS, the Town Board of the Town of East Greenbush, County of Rensselaer, State of New York, does annually enter into an Agreement for Sewer Services with the following Individuals/Entities:

Dean and Doris Calamaras; Willard L. Clum, Jr.; Karen Hynes; Vincent E. Sturn and Mary A. Sturn; Love Lutheran Church; Love Lutheran Parsonage; Massimo and Rita Bernardo; and

WHEREAS, the Town Comptroller attests that the provisions of this resolution shall not pose an adverse impact to the Town's Finances; now therefore be it

RESOLVED, that the Supervisor of the Town of East Greenbush is hereby authorized to enter into an Agreement for the General Sewer District connections of the aforementioned, at a sum not to exceed Six Hundred Twenty Dollars (\$620.00) each; said Agreement to be valid throughout the year 2013 and to expire on December 31, 2013, and that these charges shall be billed to the owner in four (4) equal installments (\$155.00) during the months of February 2013, May 2013, August 2013, and November 2013.

The foregoing resolution was duly moved by Supervisor Langley and seconded by Councilperson O'Brien and brought to a vote as follows:

| | |
|-----------------------|-------|
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Malone | VOTED |

11-2013 Acceptance of the Resignation of Jason Guynup

WHEREAS, the Town Board has received a letter of resignation from Jason Guynup; and

WHEREAS, the Town Comptroller has certified that the provisions of this resolution will have no adverse impacts on the Town Finances; now therefore be it

RESOLVED, that the resignation of Jason Guynup, effective December 20, 2012, is hereby accepted.

The foregoing resolution was duly moved by Supervisor Langley and seconded by Councilperson Matters and brought to a vote as follows:

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|-----------------------|-------|
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |
| Councilperson Mangold | VOTED |

Councilperson Malone

VOTED

12-2013 Authorize Employees to attend the Association of Towns Annual Meeting

WHEREAS, the Town Comptroller has certified that the provisions of this resolution were planned for in the 2013 Budget and will have no adverse impacts on the Town Finances; and now therefore be it

RESOLVED, that the following persons be authorized by the Town of East Greenbush to attend the Annual Meeting of the Association of Towns in New York City, February 17-20, 2013:

Joe Cherubino, Ron Stark, Kevin Engel, Joe Liccardi and Eileen Donahue

FURTHER RESOLVED, the Town will pay the lodging expense and the conference attendance expense. Attendees shall advance the cost for transportation and meals and maintain an expense report accompanied by appropriate receipts to be submitted to the Comptroller following the Meeting for reimbursement.

The foregoing Resolution was duly moved by Supervisor Langley and seconded by Councilperson O'Brien and brought to a vote as follows:

| | |
|-----------------------|-------|
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Malone | VOTED |

13-2013 A Resolution to Approve of the Contract for Emergency Medical Services

WHEREAS, the current contract for emergency medical services (hereinafter, "EMS") between the Town of East Greenbush, for and on behalf of the East Greenbush Ambulance District (hereinafter, "District"), and W. F. Bruen Emergency Squad, Inc. (hereinafter, "Bruen") has expired; and

WHEREAS, The Town Comptroller certifies that the terms of the contract do not negatively impact the 2013 cash flow or the 2013 Budget; and

WHEREAS, the Board has reviewed and considered the terms and conditions of a new EMS contract with Bruen, a copy of which is attached hereto and made a part hereof; now, therefore, be it

RESOLVED, that the Board hereby approves the aforesaid EMS contract with Bruen, and authorizes the Town Supervisor to execute said EMS contract for and on behalf of the District.

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson O'Brien and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

14-2013 A Resolution Appointing Jeffrey M. Selchick as Hearing Officer in a Matter involving Police Officer James Cook

WHEREAS, the Town Comptroller has certified that the provisions of this resolution will have no significant adverse impacts on the Town Finances; now therefore be it

BE IT RESOLVED, the Town Board of the Town of East Greenbush hereby appoints Jeffrey M. Selchick, Esq., to serve as the hearing officer under Section 207-c of the New York General Municipal Law, to preside over a due process hearing and make findings of fact and recommendations in his capacity as Hearing Officer, in a matter involving Police Officer James Cook.

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Supervisor Langley

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

15-2013 A Resolution Appointing Christine Warren, Esq. to the Position of East Greenbush Planning Board Attorney

WHEREAS, Christine Warren, Esq., a Town resident attorney admitted to practice law in the State of New York, has been appointed to the position of East Greenbush Planning Board Attorney, and

WHEREAS, the Town Comptroller has certified that none of the provisions of this proposed Board action shall pose an adverse impact to the Town's finances; and

WHEREAS, the Town Board finds Christine Warren to have appropriate qualifications and qualified to hold this position, now, therefore be it

RESOLVED, that Christine Warren Esq., be and is hereby appointed to the position of East Greenbush Planning Board Attorney on an independent contractor basis per retainer letter to be submitted to the Town at an annual rate of \$7,000.00, term ending 12/31/2013.

The foregoing Resolution was duly moved by Councilperson O'Brien and seconded by Councilperson Mangold and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson O'Brien | VOTED |
| Councilperson Mangold | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

16-2013 A Resolution Appointing Joseph Slater, Esq., to the Position of East Greenbush Zoning Board Attorney

WHEREAS, Joseph Slater, a Town resident attorney admitted to practice law in the State of New York, has been serving as Town of East Greenbush Zoning Board Attorney, and

WHEREAS, the Town Comptroller has certified that none of the provisions of this proposed Town Board action shall pose an adverse impact to the Town's finances; and

WHEREAS, the Town Board finds Joseph Slater to have appropriate qualifications and qualified to hold this position, now, therefore be it

RESOLVED, that Joseph Slater, Esq., be and is hereby appointed to the position of East Greenbush Zoning Board Attorney on an independent contractor basis per retainer letter to be submitted to the Town at an annual rate of \$10,000.00, term ending 12/31/2013

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson Matters and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

17-2013 A Resolution Approving and Authorizing the Settlement of Tax Certiorari Proceeding entitled AJN Enterprises vs. Town of East Greenbush

WHEREAS, AJN Enterprises has brought Article 7 Tax Certiorari actions against the Town of East Greenbush in Rensselaer County Supreme Court, now pending for the year 2012

WHEREAS, after considerable discovery, inspection, appraisal review and negotiation with Petitioners counsel, the Town certiorari counsel and the Assessor's Office have recommended a settlement agreement to the following values for the year 2012

| Property Address | SBL No. | Assessment | Reduced Assessment | Total Reduction |
|------------------|------------|----------------|--------------------|-----------------|
| 2 Troy Road | 166.15-6-1 | \$2,000,000.00 | \$1,550,000.00 | \$450,000.00 |

BE IT RESOLVED, that the above captioned tax certiorari proceeding be settled in the amounts and for the years set forth above, and that the tax certiorari counsel be and is hereby authorized to execute all documents necessary to effectuate said settlement.

The foregoing Resolution was duly moved by Councilperson Malone and duly seconded by Councilperson O'Brien and brought to a vote as follows:

| | |
|-----------------------|-------|
| Councilperson Malone | VOTED |
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |

18-2013 A Resolution Authorizing a Memorandum of Understanding with Local 3708, Council 82, the Dispatchers Union

WHEREAS, the Police Contract between the Town of East Greenbush and the East Greenbush Emergency Communications Association, Local 3708, Council 82, AFSCME, AFL-CIO, contract is effective until December 31, 2013; and

WHEREAS, the Parties have now negotiated modifications to the Labor Agreement now in effect; now, therefore,

WHEREAS, the Town Comptroller has certified that the provisions of this resolution were planned for in the 2013 Budget and will have no adverse impacts on the Town Finances; now therefore be it

BE IT RESOLVED, that the Supervisor of the Town of East Greenbush is hereby authorized and directed to execute the attached Memorandum of Understanding prepared and submitted by the Chief of Police and approved by Special Counsel for the Town of East Greenbush.

The foregoing resolution was duly moved by Supervisor Langley and seconded by Councilperson Matters and brought to a vote as follows:

| | |
|-----------------------|-------|
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Malone | VOTED |

19-2013 A Resolution Authorizing the Mutual Community Sharing Plans for High Intensity Law Enforcement Activity Agreement

WHEREAS, the Town Board of the Town of East Greenbush, does maintain an agreement for Mutual Community Sharing Plans for High Intensity Law Enforcement Activity with the following communities:

Town of Schodack, Town of North Greenbush, City of Rensselaer and Village of Nassau

WHEREAS, this agreement is permitted under Article 5-G, subdivision 3 of Section 119-o of the General Municipal Law, and

WHEREAS, the parties hereto have identified a potential need for certain law enforcement missions that require intense effort in order to meet the industry standard for acceptable delivery of service. Typically, this activity is associated with the need for specialized equipment and specially trained employees;

WHEREAS, the Town Comptroller has certified that the provisions of this resolution were planned for in the 2013 Budget and will have no adverse impacts on the Town Finances; and therefore be it

RESOLVED, that the Town Board of East Greenbush authorizes the Supervisor to enter into the High Intensity Law Enforcement Activity Agreement

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson Matters and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

20-2013 Resolution Authorizing Changes in Employee Contribution for Health Coverage

WHEREAS, the Town Board of the Town of East Greenbush to mitigate the continued increase in health insurance costs; and

WHEREAS, the Town Comptroller has certified that this Resolution will not have a negative impact on the Town's finances; now, therefore

BE IT RESOLVED, current Town Employees who currently do not contribute to the cost of individual coverage, and who are not covered by a union contract shall begin to contribute the difference between the premium for the most expensive plan (currently: Empire/NYSHIP) and the least expensive plan (currently: CDPHP) if the employee chooses Empire coverage; and be it

FURTHER RESOLVED, that the non-union employees currently paying a percentage of the annual premium are not impacted by this board action; and be it

FURTHER RESOLVED, the employee's contribution shall continue at the current rate if the employee chooses the less expensive plan; and be it

FURTHER RESOLVED, this change is effective in December 2013 for the 2014 premiums

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson O'Brien and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Malone | VOTED |

21-2013 A Resolution to Establish the Bowling Program Fees

WHEREAS, The Town is required to establish rates to be charged by the Department of Community and Recreational Services; and

WHEREAS, after careful review by the Town Comptroller, the Director of Community and Recreational Services, and the Town Board a new rate has been set for the Bowling Program; now therefore

BE IT RESOLVED, that the fee of \$70 per child, is effective immediately

The foregoing Resolution was duly moved by Councilperson O'Brien, seconded by Supervisor Langley, and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson O'Brien | VOTED |
| Supervisor Langley | VOTED |
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Councilperson Malone | VOTED |

22-2013 Acceptance of the Resignation of Jordan Harrington

WHEREAS, the Town Board has received a letter of resignation from Jordan Harrington; and

WHEREAS, the Town Comptroller has certified that the provisions of this resolution will have no adverse impacts on the Town Finances; now therefore be it

RESOLVED, that the resignation of Jordan Harrington, effective January 16, 2013, is hereby accepted.

The foregoing resolution was duly moved by Councilperson Mangold and seconded by Councilperson Matters and brought to a vote as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

23-2013 Approval of Professional Services Agreement with Delaware Engineering

WHEREAS, the Town requires the professional services of an engineering firm for the design and regulatory approval, bidding services, construction engineering, contract administration, and construction inspection in connection with the upgrade to the Town's Wastewater Treatment Plant; now therefore

BE IT RESOLVED, that the procurement of professional services, as per the attached Professional Services Agreement, to be provided by Delaware Engineering., P.C. (hereinafter, Delaware Engineering) as an independent contractor to the Town, be, and the same hereby is, approved; and be it further

RESOLVED, that the Town Comptroller has heretofore attested that none of the provisions of the foregoing resolution shall pose an adverse impact to the Town's finances; and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to execute a professional services agreement with Delaware Engineering, for an amount not to exceed \$660,000, to be paid from EFC Funding, immediately following its approval by the Attorney for the Town.

The foregoing Resolution was duly moved by Councilperson Matters and seconded by Councilperson Mangold and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Matters | VOTED |
| Councilperson Mangold | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

24-2013 Approval of Professional Services Agreement with Chazen Engineering

WHEREAS, the Town requires the professional services of an engineering firm for the design and regulatory approval, bidding services, construction engineering, construction administration, construction inspection, and post-construction services in connection with the upgrade to the Town's Wastewater Treatment Plant; now therefore

BE IT RESOLVED, that the procurement of professional services, as per the attached Professional Services Agreement, to be provided by Chazen Engineering, Land Surveying & Landscape Architecture Co., P.C. (hereinafter, Chazen Engineering) as an independent contractor to the Town, be, and the same hereby is, approved; and be it further

RESOLVED, that the Town Comptroller has heretofore attested that none of the provisions of the foregoing resolution shall pose an adverse impact to the Town's finances; and be it further

RESOLVED, that the Town Supervisor is hereby authorized and directed to execute a professional services agreement with Chazen Engineering, for an amount not to exceed \$660,000, to be paid from EFC Funding, immediately following its approval by the Attorney for the Town.

The foregoing Resolution was duly moved by Councilperson Mangold and seconded by Councilperson O'Brien and brought to a vote resulting as follows:

| | |
|-----------------------|-------|
| Councilperson Mangold | VOTED |
| Councilperson Matters | VOTED |
| Supervisor Langley | VOTED |
| Councilperson O'Brien | VOTED |
| Councilperson Malone | VOTED |

Public Comment Period: Members of the public wishing to speak shall state their name and address and will be granted the floor for up to five minutes. The Board thanks everyone in attendance for their understanding and for their desire to actively participate in the decision-making process.

Upon disposal of the resolutions: Members of the public with general comments on Town government will be recognized.

ADJOURNMENT

Motion to adjourn by Supervisor Langley seconded by Councilperson Matters and brought to a vote as follows:

EAST GREENBUSH POLICE DEPARTMENT

MEMORANDUM

To: Hon. Town Board
From: Christopher Lavin, Chief of Police
Date: 01/02/2013
Subject: List of Part Time Dispatcher Appointments & Reappointments

Pursuant to the appointing resolution of the Town Board, the following names shall constitute the aforesaid list:

S.C. Schongar
M.L. (Martin) Parks
E.R. DiMartino
M.J. Benson
D.P. Farnan
R.G. Lehmann
J.G. Tooker
T.J. Gullo
G.G. Forgea
D.A. Holt
J.D. Harrington
C.E. McCabe
P.J. Glasser
E.J. Witko



AGREEMENT

THIS AGREEMENT, made the ____ day of _____, 2013, by and between the Town of East Greenbush, a municipal corporation with its principal place of business at 225 Columbia Turnpike, East Greenbush, New York 12144 (hereinafter "Town"), and the W.F. Bruen Emergency Squad, Inc., a not for profit corporation with its principal place of business in the County of Rensselaer, existing under the laws of the State of New York, New York (hereinafter "Ambulance").

WITNESSETH

WHEREAS, Town desires to arrange for ambulance services for persons situated within its borders;

WHEREAS, Ambulance desires to provide ambulance services to its residents and persons situated within the Town's borders;

WHEREAS, in order to defray the cost of ambulance service and in order to provide the residents with the services it desires, it is necessary for Town to impose a tax for ambulance services, which may be offset by user fees billed to patients; and

WHEREAS, such emergency services are vital and necessary to the health and welfare of the inhabitants of the Town;

WHEREAS, The Ambulance agrees to have an independent auditor review all expenses of the ambulance on an annual basis and report those findings to the Ambulance District Board of Commissioners;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto mutually agree as follows:

1. PROVISION OF EMERGENCY MEDICAL SERVICES

- (a) Ambulance will provide Town with basic and advanced life support emergency medical ambulance services, which complies with the regulations of the New York State Department of Health, Bureau of Emergency Medical Services to serve the emergency medical needs of those persons within the boundaries of the Town. Services to be provided include Basic Life Support transport and treatment and arranging for or providing Advanced Life Support Treatment.
- (b) The provision of equipment, services and transportation are limited to the extent reasonable and possible based upon Ambulance's available resources and personnel.

2. TERM

The term of this Agreement shall be for a period of one year, commencing on the 1st day of January, 2013 and shall continue through the 31st day of December of such year, unless sooner terminated as herein provided.

3. COMPENSATION

- A. Town agrees to pay Ambulance the amount of one million fifty one thousand, nine hundred and thirteen dollars and zero cents (\$1,051,913.00) for the provision of ambulance services (hereinafter “Contract Fee”). However, the total fee need not be collected from taxes. The town shall raise six hundred seventy one thousand, nine hundred and thirteen dollars (\$671,913.00) from taxes. The sum of four hundred twenty thousand dollars (\$420,000) shall be paid from billing revenue only. Should the amount of billing revenue collected during the contract year exceed this amount, the excess billing revenue up to fifty thousand (\$50,000) dollars shall be remitted to the Town to be used to offset the following year’s tax burden for ambulance service. Any amount collected by insurance billing that exceeds fifty thousand (\$50,000) dollars, can be retained by the Ambulance to be used for Operational Purposes. The Town is hereby relieved from the obligation to pay less than the amount of fifty thousand dollars (\$50,000) from the tax role from any shortfall from billing revenue.
 - a. Payments will be made through Electronic Fund Transfer (EFT) from the Town to the Ambulance quarterly utilizing the following schedule:

| Date of Transfer | Amount |
|-------------------------------|----------------|
| 01 February 2013 | \$262,978.25 |
| 01 May 2013 | \$262,978.25 |
| 01 August 2013 | \$262,978.25 |
| 01 November 2013 | \$262,978.25 |
| Total agreed cost of service: | \$1,051,913.00 |

- B. The Town has established a schedule of user fees to be imposed upon persons served by the Ambulance. Ambulance shall collect the funds. Ambulance shall provide an accounting of the funds received from persons served in the boundaries of the contracted area approximately each month. The total of the funds collected during the contract year shall offset the amount due from the Town under this Agreement.
- C. Any funds collected in the next contract year shall be applied to that year’s contract funds. Should the parties terminate the Agreement, any billing revenues collected by Ambulance in the year following termination shall be paid to the Town, but only up to the amount actually paid by the Town to the Ambulance and not the amount of the actual contract fee.
- D. No later than September 1 of each year of the Term, Ambulance shall submit to the Town a proposed budget, in a format acceptable to the Town, for evaluation relative to the Town’s adoption of the District’s budget for the following year.

E. On an annual basis, Ambulance shall have an audit performed on its operations by a Certified Public Accountant (CPA), and such audit results shall be provided to the Town.

4. AVAILABILITY OF SERVICE

The Town recognizes that in some or all cases, only basic life support may be available or apparently necessary based upon the information available. Town also recognizes that on some occasions no ambulance may be available due to Ambulance's lack of vehicles and/or personnel to respond to all emergencies for which it contracts to provide services, both within and without the Town's boundaries. Town holds Ambulance harmless for Ambulance's failure to provide services on occasions when such resources are temporarily unavailable.

5. INSURANCE

Ambulance agrees to maintain liability insurance sufficient to insure itself against claims for unintentional torts resulting in personal injuries in the amount of Three Million Dollars (\$3,000,000.00). Ambulance agrees to maintain automobile insurance for injuries arising out of the operation of emergency vehicles for at least One Million Dollars (\$1,000,000.00). Ambulance shall have the Town named as an additional insured in the insurance policy and present the Town with a certificate of insurance and make arrangements for automatic notification of the Town in the case the insurance policy lapses or is cancelled.

Town shall be responsible for providing the Volunteer Ambulance Workers Benefit Law benefits and workers compensation benefits, as required by such laws.

6. NO EMPLOYMENT

Ambulance's employees shall not be deemed employees of the Town. Nothing herein creates an employment relationship which subjects the Ambulance or its employees/volunteers to the supervision and control of the Town or is intended to create any municipal liability for such supervision on behalf of the Town.

7. CONFIDENTIALITY

Nothing herein shall entitle the Town to the name, address or social security number of any patient served. Town will not require Ambulance to release any patient's medical information.

8. CONTINUATION OF SERVICES

If Ambulance's services continue to be provided by the request of the Town beyond the expiration of the term hereof, the terms of this Agreement shall continue on a monthly basis unless and until the parties enter into a subsequent written agreement.

9. EXPIRATION OR TERMINATION OF RESPONSIBILITIES

Upon expiration or termination of the Agreement as provided hereunder. Ambulance shall have no liability or responsibility for providing services under this Agreement to any person within the Town's boundaries. In the event either party desires to cancel this Agreement or cease providing or receiving ambulance services, the terminating party must provide written notice thereof to the other party at least ninety (90) days prior to the expiration of any term of the Agreement.

10. GROUNDS FOR TERMINATION

This Agreement shall terminate prior to the expiration of the term hereof upon the happening of any of the following events:

- (a) upon the Town's failure to deliver the monies due Ambulance under this Agreement by the date due, so long as Ambulance provides thirty (30) days written notice to the Town of the date it will stop providing services;
- (b) upon the loss or suspension of Ambulance's ability to deliver emergency medical services due to the loss of a certificate of need or the loss of operating permits or licenses. In such instance, Ambulance shall reimburse Town for the prorated balance of the fee paid for the then term.

11. NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given if delivered by hand or mailed by registered or certified mail, return receipt requested, to the parties at their respective addresses hereinabove stated or to such other addresses as may be designated by written notice complying as to delivery with the terms of this Section.

12. SAVINGS CLAUSE

If any provision of this Agreement is determined to be legally invalid, inoperative or unenforceable, only that particular provision shall be affected, such determination shall have no effect whatsoever on any other provision of this Agreement, and all other provisions shall remain in full force and effect.

13. WAIVER

No delay or failure to exercise any remedy or right occurring upon any default shall be construed as a waiver of such remedy or right, or an acquiescence in such default, nor shall it affect any subsequent default of the same or a different nature. All rights and remedies herein conferred shall be in addition to and not exclusive of any and all other rights or remedies now or hereafter existing at law or in equity.

14. HEADINGS

All headings and captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and shall in no way define, limit, extend or describe the scope or intent of any provisions hereof.

15. FURTHER ASSURANCES

The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes set forth in this Agreement.

16. BINDING EFFECT

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executor, administrators, successors and assigns.

17. COUNTERPARTS

This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The County of Rensselaer in the State of New York is hereby designated as the place of trial for any action or proceeding arising from or in any way connected to this Agreement.

19. NO ASSIGNMENT

This Agreement shall not be assigned by any party without the prior written consent of the other party.

20. GENDER NEUTRAL

Wherever used herein and required by the context, the singular number shall include the plural, the plural shall include the singular number, and the use of either gender shall include both genders and the words "hereof" and "herein" and "hereafter" shall refer to the entire Agreement and not to any provision or section.

21. ENTIRE AGREEMENT

This Agreement is the entire agreement among the parties and shall not be changed, except by a writing signed by the party to be charged. Further, this Agreement shall supersede all prior agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals as of the

day and year first above written.

BY:

Keith Langley
East Greenbush Town Supervisor

BY:

Patricia Mulberry, Chair BOD
W.F. Bruen Emergency Squad, Inc.

MEMORANDUM OF UNDERSTANDING

Local 3708, Council 82, (hereinafter "the Union") which represents the Police Dispatchers of the Town of East Greenbush, hereby enter into the following Memorandum of Understanding with the Town of East Greenbush (hereinafter "the Town"):

1. The Union and the Town are parties to a Labor Agreement which remains in effect until December 31, 2013;
2. The Parties seek the mutual benefits to be gained by implementing the attached **modifications** to the aforesaid Agreement, which through execution, shall be made part and parcel of said Labor Agreement;
3. The Parties therefore enter into this Memorandum of Understanding through execution by their respective representatives, to take effect on January 16, 2013, or, on the date of last execution as set forth below, whichever is earliest.

Ronald Yeates – President Local 3708

Date

Keith Langley – Supervisor, Town of East Greenbush

Date

MODIFICATIONS

ARTICLE IV

GENERAL PROVISIONS

Section 1: Staffing (insert new paragraph)

The Town shall deploy a staff of full-time and part-time dispatchers which it deems adequate to meet the needs of the Unit. The Town reserves the right to set the work schedule of the Unit which shall be posted in advance by the Senior Dispatcher. This schedule may include a combination of fixed shifts and up to two flexible shifts. A fixed shift refers to pre-scheduled tours-of-duty which follow the same pattern of on-duty hours and same set of workdays. A flexible shift refers to pre-scheduled tours-of-duty that may have different on-duty hours over a differing set of workdays, and, which may be subject to change on reasonable notice.

(Remainder of section unchanged)

ARTICLE III

OVERTIME, PAY PERIODS, CALL BACK TO DUTY

Section 1: Overtime (insert new line at the end of paragraph 1)

Full time members of the Union... Overtime on holidays shall be paid at the rate of two and one-half (2 1/2) times the regular hourly rate.

Section 7: Mandatory Overtime (this section deleted)

End of Modifications

**MUTUAL COMMUNITY SHARING PLANS FOR
HIGH INTENSITY LAW ENFORCEMENT ACTIVITY**

This agreement is made this **1st day of January, 2013** between the Town of East Greenbush, a municipal corporation with its principal place of business at 225 Columbia Turnpike, Rensselaer, NY 12144; the Town of Schodack, a municipal corporation with its principal place of business at 265 Schuurman Road Castleton NY 12033; Town of North Greenbush, a municipal corporation with its principal place of business at 2 Douglas Street, Wynantskill, NY 12198; and the City of Rensselaer, a municipal corporation with its principal place of business at 62 Washington St, Rensselaer, NY 12144, Village of Nassau, a municipal corporation with its principal place of business at 40 Malden Street Nassau N.Y 12123

RECITALS

WHEREAS, Article 5-G, subdivision 3 of Section 119-o of the General Municipal Law permits, municipal corporations to enter into agreements for the performance amongst themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis for the provisions of a joint service; and

WHEREAS, the parties hereto have experienced the need within their jurisdictions a potential need for certain law enforcement missions that require intense effort in order to meet the industry standard for acceptable delivery of service in each case. Typically, this activity is associated with the need for specialized equipment and specially trained employees.

NOW THEREFORE, the parties do mutually agree pursuant to the terms and provisions of this HIGH INTENSITY LAW ENFORCEMENT ACTIVITY AGREEMENT as follows:

ARTICLE ONE

PURPOSE OF THE AGREEMENT

The purpose of this agreement is to:

1. formalize the relationship of the parties, being Town of East Greenbush Police Department, the Town of Schodack Police Department, the Town of North Greenbush Police Department, the City of Rensselaer Police Department and the Village of Nassau Police Department and;
2. Clarify the obligations of the parties; and
3. Make available to each party; the specialized equipment and the specially trained employees among the parties to provide an acceptable and cost effective response to certain high intensity cases.
4. Services to be covered;

CERT: A special weapons and tactics team. This operation is the subject of a separate inter-municipal agreement between the towns of East Greenbush, North Greenbush, Schodack and the City of Rensselaer. This agreement has been in place for more than ten

years and the existing Operational Plan for the Community Emergency Response Team will continue to be the governing document between the three towns.

Hostage Negotiators: for those occurrences where skilled negotiators may serve to de-escalate a critical incident.

Accident Investigation: Serious injury or fatal traffic accident investigations

Crime Scene Investigation: Major case forensics, evidence recovery and scene documentation.

Training: In-Service training (i.e.; Legal Updates, Defensive Tactics, and Immediate Rapid Deployment) and other training as needed

Communications: To provide call taking & dispatch services or any other communications need as agreed upon by the agencies.

ARTICLE TWO

PERSONNEL AND EQUIPMENT

Each party agrees that their Police Department (grantor) may supply personnel, equipment and other available resources to the other (grantee) upon request in the event of an emergency, if their respective Police Chief or chief's panel or their designees, deems it appropriate. The number of personnel, if any and the amount or type of equipment to be dispatched by the grantor agency shall be determined by that agency's Police Chief or Chief's Panel or their designees.

ARTICLE THREE

RETAINED PERSONNEL AND EQUIPMENT

The agencies agree that the grantor agency which is responding to the request of any grantee agency, shall hold back sufficient personnel and equipment to maintain adequate services within the territory of said grantor. Should the need arise, any grantor agency may recall any personnel and equipment or any part thereof. The grantor shall inform the grantee of its intent to withdraw from the situation.

ARTICLE FOUR

COMPENSATION

No participant, as a grantee, shall be obligated to compensate any grantor, for services rendered or for injuries sustained by any grantee, or for the use or damage to the grantor's equipment. Specifically, and without limiting the foregoing, the grantee shall have no obligation for payment of wages or withholding

for unemployment, workers compensation, or for the payment of any other benefits to the personnel of the grantor. Each party hereto hereby expressly waives any and all claims to whatever type or nature, except for gross negligence, against the other and its personnel, which may arise out of the performance of this Agreement.

ARTICLE FIVE

CONTROL OF PERSONNEL AND EQUIPMENT

The person in charge of the personnel and equipment of the grantor agencies shall report to the Incident Commander, Tactical Team Leader, Supervisor or other person in charge of the incident in the territory of the grantee agency at the location of the incident. Thereafter, the parties shall devise a plan pertaining to the deployment of the personnel and equipment.

ARTICLE SIX

PRIVILEGES AND IMMUNITIES

To the extent permitted by law, all privileges and immunities from liability which normally attach to the activities of any party while performing its functions within that party's normal geographic area of employment, shall also apply to the activities of that party while acting in the capacity as a grantor agency under the terms and conditions of this agreement.

ARTICLE SEVEN

LINE OF DUTY DEATH or INJURY

The effect of death, injury, or disability to any officer while acting outside their normal geographic area of employment, while participating under the terms and conditions of this agreement, shall be the same as if as if they were killed, injured or were to become disabled while acting within their normal geographic area of employment, and any such injury, disability or death shall be considered to be in the line of duty.

ARTICLE EIGHT

INDEMNIFICATION

No agency or government entity which is a party to this agreement shall be liable for any lost property, damaged property, medical expenses, property replacement, or other damages or any other claim made by any employee of a grantor agency arising out of participation in this agreement.

ARTICLE NINE

ADMINISTRATION

It is the intention of the participants that no separate legal entity be created by this agreement to carry out its provisions. To the extent this Agreement requires administration other than as set forth herein, it shall be administered by the governing bodies or an appointee of the governing bodies hereto acting as

joint board. No real or personal property shall be acquired by the participants as a result of this Agreement.

ARTICE TEN

DISCHARGE OF PUBLIC DUTY

This Agreement shall not relieve any participant of any obligation or responsibility imposed upon it by law except that performance of any grantor may be offered in satisfaction of any such obligation or responsibility to the extent of actual and timely performance thereof by the responding party.

ARTICLE ELEVEN

COMPLIANCE WITH LAWS

Each participant agrees that each will comply with all applicable Federal, State and Local Laws, Rules and Regulations applicable to the respective entities and employees in connection with the performance of this Agreement.

ARTICLE TWELVE

CERT ADMINISTRATION

(Article IX CERT Agreement)

- 1. No separate legal entity is created by this Agreement nor is any required to carry out the provisions herein.**
- 2. No real or personal property shall be acquired through operation of this Agreement.**
- 3. The ownership of supplies, material or public property, acquired by any Party hereto in the furtherance of the mission of the TEAM or of this Agreement, shall be retained by said Party and accounted for by said Party pursuant to applicable law.**
- 4. An inventory of such supplies, material or public property as described above, and the manner of its acquisition shall be maintained in accordance with industry standard recordkeeping practices.**
- 5. The Parties agree to evenly share the cost of supplies, material or public property which is acquired at the direction of the Chief's Panel. Annual Dues of \$3500.00 are due to the Town of East Greenbush by March 1st of each year. Unused funds will carry over from year to year.**
- 6. A central point of purchasing shall coordinate such authorized expenses, including maintaining a journal thereof and evenly distributing said authorized costs to each Party. At this time the Town of East Greenbush will continue to provide a central point of purchasing.**

7. To the extent that this Agreement should require administration other than as set forth herein, it shall be administered by the governing bodies or an appointee of the governing bodies hereto, acting as a joint board.

**ARTICLE THIRTEEN
SHARED SERVICES OPERATING ACCOUNT**

If the parties to this agreement decide to create a Shared Services Operating Account to cover the costs of supplies, maintenance etc. of shared equipment or any other shared property or materials, those costs will be evenly shared. The amount of funds from each party and the administration of such account will be mutually agreed upon by each Chief or their designee.

**ARTICLE FOURTEEN
APPROVAL, DURATION, AND TERMINATION**

1. This Agreement shall not be effective until approved by a majority vote, as required by section 119-o of the General Municipal Law, of the governing body of each agency.
2. This Agreement may be changed, modified or amended by written agreement of the participants, subject to the requirements of paragraph 1 of this Article.
3. This Agreement shall terminate on **December 31, 2016**. The terms herein shall continue, however, until legislative bodies have held their annual Organizational Meetings. At such meeting, this Agreement shall be considered for renewal, and if approved by each legislative body, such renewal shall be made effective as stated in the approval. Any party may terminate any rights and obligations under this Agreement at any time by giving thirty days written notice of its intent to withdraw from this Agreement.
4. All notices shall be provided to:

A. Town of East Greenbush
Officer of the Town Attorney
225 Columbia Turnpike
Rensselaer, NY 12144

Keith Langley, Supervisor

B. Town of Schodack
Office of the town of Attorney
265 Schuurman Road
Castleton, NY 12033

Dennis Dowds, Supervisor

C. Town of North Greenbush
Office of the Town Attorney
2 Douglas Street
Wynantskill, NY 12198

Alson Spain, Supervisor

D. City of Rensselaer
Office of City Attorney
62 Washington Street
Rensselaer, New York

Daniel J. Dwyer, Mayor

E. Village of Nassau
40 Malden Street
Nassau NY 12123

Charles H. Collins, Mayor

PROFESSIONAL SERVICES AGREEMENT

**TOWN OF EAST GREENBUSH
SANITARY SEWER UPGRADES
("PROJECT")**

This Agreement is by and between

Town of East Greenbush ("CLIENT")
225 Columbia Turnpike
Rensselaer, NY 12144

and,

Delaware Engineering, P.C. ("ENGINEER")
28 Madison Avenue Extension
Albany, New York 12203

Who agree as follows:

The CLIENT hereby engages the ENGINEER to perform the services described in Part I ("SERVICES") and the ENGINEER agrees to perform the Services for the compensation set forth in Part II. Work shall be conducted pursuant to the Standard Terms and Conditions provided in Part III. The ENGINEER shall be authorized to commence the Services upon execution of this Agreement. The CLIENT and the ENGINEER agree that this signature page, together with Parts I-III and any attachments referred to therein, constitute the entire agreement between them relating to continuing Project assignments (Agreement).

APPROVED FOR CLIENT

APPROVED FOR ENGINEER

By: _____

By:  _____

Printed Name: Keith A. Langley

Printed Name: John K. Brust

Title: Supervisor

Title: Manager, Corporate Operations

Date: _____

Date: January 10, 2013

PART I

ENGINEER'S RESPONSIBILITIES

PROJECT UNDERSTANDING AND SCOPE OF SERVICES

The Town of East Greenbush is under a Consent Agreement with the NYS Department of Environmental Conservation to resolve sanitary sewer deficiencies within the Town's sewer collection and wastewater treatment plant. As part of this Consent Agreement, the NYSDEC has incorporated a sewer moratorium on the Town which inhibits the economic development of the community. The Town seeks to provide a cost effective way of ensuring that the sewer system is upgraded to meet the requirements of the Consent Agreement, to correct the sewer deficiencies and to remove the sewer moratorium.

The anticipated sewer upgrades need to ensure compliance with regulatory standards and correct the existing deficiencies is anticipated to include the following upgrades to the wastewater treatment facility:

Wastewater Treatment Plant Upgrades: In 2009, with amendments in 2012, Delaware Engineering completed an Engineering Report outlining upgrades required at the treatment plant. These upgrades are required in order to correct existing deficiencies at the plant and to increase the capacity of the facility. Proposed upgrades include new influent screening systems, additional primary settling capacity, activated sludge biological treatment upgrades, secondary clarifier upgrades, sludge processing improvements and additional disinfection system capacity. The improvements are anticipated to increase the peak hourly flow capacity of the facility to 8.9 mgd.

Other upgrades required in the collection system to comply with the Consent Agreement will be completed by others.

SCOPE OF SERVICES

This Scope of Services includes the steps necessary to complete upgrades to the existing wastewater treatment system serving the Town of East Greenbush. The project includes the development of approved design plans, permitting, bidding assistance, selection of qualified contractors.

As described in the following pages, the Delaware Engineering, P.C. (Delaware) scope of services is inclusive of attendance at meetings and phone conversations with representatives of the Town and regulatory agencies without limitation. A description of engineering services to be provided during construction is also included.

The following represents the scope of services to be provided by Delaware:

TASK 1.0 – DESIGN AND REGULATORY APPROVAL

Design services include all efforts to secure approval of Final Engineering Plans from the NYSDEC and other regulatory agencies as necessary for the upgrades to the wastewater treatment plant.

1. Delaware will prepare final design plans and specifications for the improvements. All bid and contract documents will be prepared in accordance with New York State requirements and Town General Conditions adapted for the project. Delaware will submit the bid documents for review and approval by the Town, Town Engineers and the Town Attorney.
2. Delaware will prepare, submit and secure a modification to the WWTP SPDES Permit as well as plan approval from the NYSDEC required for the proposed improvements. Other permits and approvals such as site plan review, NYSDOT highway work permits, SPDES for discharge of construction stormwater will be prepared by others. Delaware will provide sets of engineering plans for review by the NYSDEC and other reviewing agencies as required. Our staff will attend meetings and provide information to ensure timely review by these agencies.
3. Delaware Engineering will meet with Town representatives on a monthly basis or more frequently, as required.
4. The Final Design Construction Manual and plans will be provided to NYSDEC for review and approval when engineering plans are 100% complete. In addition, copies of the Final Design Construction Manual will be provided to other agencies with regulatory or approval authority, as appropriate.

5. Delaware Engineering will attend meetings and prepare and provide necessary documentation without limitation to obtain regulatory approval of the Final Engineering Plan.
6. Updated cost estimates and construction schedules will be prepared upon completion of the design and presented to the Town.

It is anticipated that the following tasks will be completed by others:

- a. Stormwater Pollution Prevention Plans (SWPPP), specifications and permitting will be completed by others.
- b. Any Site Plan approvals through the Planning Board and Highway Work permits will be completed by others.
- c. All site surveys and geotechnical studies will be completed by others.

Deliverables:

1. *SPDES Permit Applications (Except stormwater)*
2. *3 sets of Bid Documents for review and approval*
3. *Final Engineering plans and specifications for Town and Regulatory Review*
4. *Engineering Estimate of construction cost*
5. *Engineering Estimate of construction schedule*

TASK 2.0 – BIDDING SERVICES

Delaware Engineering will provide assistance to the Town for the bidding of the project and will ensure that the bid process is carried out in compliance with the Contract and applicable State, Federal and local laws and statutes. Delaware will provide the following Bid Assistance:

- 1) The bidding of the project is subject to competitive bidding procedures as described by New York State law. Delaware Engineering will assist the Town in ensuring that the bid process is carried out in accordance with applicable law.
- 2) Delaware will arrange for the reproduction of bid documents as necessary to support agency review and competitive bidding of the project and will support the Town in the development of bid announcements and lists of qualified contractors to receive bid documents. Twenty (20) copies of the bid documents on CD-ROM will be provided directly by Delaware Engineering. If requested by prospective bidders, hard copies of the Bid Documents will be provided at their cost.

- 3) Our staff will schedule and coordinate pre-bid conferences to answer questions from potential bidders. The Project Engineer will also be available to representatives of the Town to provide any information necessary to ensure that the bidding is carried out in conformance with applicable laws.
- 4) Delaware will prepare, reproduce, and deliver addenda to the bid documents to both the Town and the contractors as necessary throughout the bidding process and will be available to answer any questions that arise during the bidding process.
- 5) Upon receipt of bid documents, Delaware will assist the Town in determining if bidders are responsible and responsive to the bid requirements. The review performed by Delaware will include an analysis to ensure that required documentation has been filed (i.e. bid bonds, certifications, etc.). Delaware will also evaluate the qualifications of the contractors to ensure that the bidders are qualified to perform the work they have proposed. Delaware will prepare a bid tabulation for all responsive bidders and make recommendations to the Town for award of the various contracts.
- 6) After the Town has made a decision to award contracts, Delaware will assist in the execution of contracts with the selected bidder(s).
- 7) Delaware will assist the Town in the compilation and review of schedules and bypass plans provided by selected contractor(s).
- 8) Five (5) copies of the executed bid documents, bonds, insurance certificates, a contract, and a Notice to Proceed with respect to each contract awarded to a successful bidder will be developed by Delaware and provided to the Town.

Deliverables:

1. *20 digital copies on CD-ROM of bid documents, drawings and specifications for distribution to prospective contractors*
2. *Hard copies of bid documents as requested by prospective bidders, at their expense.*
3. *Addenda to Bid Documents*
4. *Bid Tabulation and Recommendation of Award*

TASK 3.0 –CONSTRUCTION ENGINEERING

Delaware Engineering will provide Construction Engineering including technical assistance with regard to the engineering design and review of material and equipment submittals. Construction engineering services will include the following elements:

- 1) Delaware staff will attend the pre-construction meeting with the selected contractor(s) to discuss design components of the project.
- 2) Engineering services to be provided during construction will include:
 - a) Review and approve shop drawings.
 - b) Attend weekly progress meetings.
 - c) Respond to inquiries and requests for information.
 - d) Review and recommend construction design changes.

Deliverables:

1. *Approved shop drawings*

TASK 4.0 –CONTRACT ADMINISTRATION

It is anticipated that Contract Administration including but not limited to the following tasks will be completed by others:

- d. General administration of the project.
- e. Coordination of preconstruction and regular construction meetings with the selected contractor(s) to establish working protocols including health and safety plans.
- f. Review of work schedules
- g. MWBE Reports and Contractor Coordination to meet local and State funding requirements
- h. Review and coordination of EFC and Contractor Requests for Reimbursement.
- i. Directing the contractor in defining staging areas and ensuring that pre-construction activities occur as required.

- j. Ensuring that all appropriate forms and reporting documentation is compiled and ready for use during construction activities.
- k. Prepare and issue work directives and Change Orders as necessary.
- l. Full time field Inspections, as required.
- m. Review, approve and witness all required tests and start up procedures.
- n. Review, approve and certify all contractor payment requests and confirm appropriate documentation of wage scales is maintained.
- o. Preparation of punch lists of outstanding issues at the time of substantial completion.
- p. Prepare and review all Close-out documents including record drawings.
- q. Provide Certification of Substantial Completion, final payment and release of retainage.

TASK 5.0 – CONSTRUCTION INSPECTION SERVICES

1. Construction Inspection Services are to be provided by others.

PART II

COMPENSATION, BILLING AND PAYMENT

| | |
|---------------------------------------|------------------|
| Design, Permitting & Bid Assistance | \$500,000 |
| <u>Construction Phase Engineering</u> | <u>\$160,000</u> |
| Total Not-to-Exceed Amount* | \$660,000 |

*Lump Sum NOT TO EXCEED without prior approval from CLIENT.

Please note that construction phase services assumes a 16 to 18 month construction window. Should construction take longer additional fees may be required.

BILLING AND PAYMENT:

Invoices for work completed will be forwarded by ENGINEER (including SUBCONSULTANT costs) to CLIENT once every 30 days, with the net due within 30 days of receipt.

DELAWARE ENGINEERING P.C.
ENGINEERING RATE SCHEDULE
 YEAR 2013

| Billing Category | Rate/Hour |
|---|------------------|
| Technical Typist / Administration | 60.00 |
| Designer, Technician, Construction Inspector | 75.00-95.00 |
| Senior Designer, Technician, Construction Inspector | 105.00 |
| Resident Engineer | 130.00 |
| Senior Planner I, GIS Specialist | 100.00 |
| Engineer / Scientist / Planner I | 95.00 |
| Engineer / Scientist / Planner II | 110.00 |
| Engineer / Scientist / Planner III | 115.00 |
| Senior Engineer / Scientist / Planner II | 130.00 |
| Senior Engineer / Scientist / Planner III | 150.00 |
| Principal Engineer / Scientist | 160.00 |

Reimbursable Expenses:

1. Mileage @ Federal Rate
2. Travel Expenses (Lodging, Meals) @ Federal Per Diem Rate
3. Telecommunications @ Cost
4. FedEx, UPS, US Postal, Courier @ Cost
5. Subcontract Management @ Cost
6. Other allowable costs @ Cost (Plan Reproductions, Photographs, etc.)
7. In-house Printing:

| | <i>B&W</i> | <i>Color</i> |
|--------------------|----------------|--------------|
| A size - 8½" x 11" | \$ 0.05 | \$ 1.00 |
| B size - 11" x 17" | \$ 0.10 | \$ 2.00 |
| D size - 24" x 36" | \$ 0.50 | \$15.00 |
| E size - 36" x 48" | \$ 1.00 | \$30.00 |
| other sizes | \$ 0.10/s.f. | \$ 2.50/s.f. |

1. STANDARD OF CARE. Services shall be performed in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional services are not subject to, and ENGINEER can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by CLIENT are specifically objected to.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by CLIENT. For some projects involving conceptual or process development services, scope may not be fully definable during initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined.

3. SAFETY. ENGINEER has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided under this Agreement, ENGINEER specifically disclaims any authority or responsibility for general job site safety and safety of persons other than ENGINEER employees.

4. DELAYS. If events beyond the control of CLIENT or ENGINEER, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, act of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 60 days, ENGINEER shall be entitled to an equitable adjustment in compensation.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon 30 days written notice to the other party. CLIENT shall pay ENGINEER for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination.

In the event either party defaults in its obligations under this Agreement (including CLIENT'S obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by ENGINEER is supplied for the general guidance of the CLIENT only. Since ENGINEER has no control over competitive bidding or market conditions, ENGINEER cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to CLIENT.

7. RELATIONSHIP WITH CONTRACTORS. ENGINEER shall serve as CLIENT'S professional representative for the Services, and may make recommendations to CLIENT concerning actions relating to CLIENT'S contractors, but ENGINEER specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction selected by CLIENT'S contractors.

8. CONSTRUCTION REVIEW. For projects involving construction, CLIENT acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. CLIENT agrees to hold ENGINEER harmless from any claims resulting from performance of construction-related services by persons other than ENGINEER.

9. INSURANCE. ENGINEER will maintain insurance coverage for Professional, Comprehensive General, Automobile, Worker's Compensation, and Employer's Liability in amounts in accordance with legal, and ENGINEER'S business requirements. Certificates evidencing such coverage will be provided to CLIENT upon request. For projects involving construction, CLIENT agrees to require its construction contractor, if any, to include ENGINEER as an additional insured on its policies relating to the Project. ENGINEER'S coverages referenced above shall, in such case, be excess over contractor's primary coverage.

10. HAZARDOUS MATERIAL. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. ENGINEER and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. ENGINEER agrees to notify CLIENT as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. CLIENT acknowledges and agrees that it retains title to all hazardous material existing on the site and shall report to the appropriate federal, state or local public agencies, as required, any conditions at the site that may present a potential danger to the public health, safety or the environment. CLIENT shall execute any manifests or forms in connection with transportation, storage and disposal of hazardous materials resulting from the site or work on the site or shall authorize ENGINEER to execute such documents as CLIENT'S agent. CLIENT waives any claim against ENGINEER and agrees to defend, indemnify, and save ENGINEER harmless from any claim or liability for injury or loss arising from ENGINEER'S discovery of unanticipated hazardous materials or suspected hazardous materials.

11. INDEMNITIES. To the fullest extent permitted by law, ENGINEER shall indemnify and save harmless CLIENT from and against loss, liability, and damages sustained by CLIENT, its agents, employees, and representatives by reason of injury or death to persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of ENGINEER, its agents or employees.

To the fullest extent permitted by law, CLIENT shall defend, indemnify, and save harmless ENGINEER from and against loss, liability, and damages sustained by ENGINEER, its agents, employees, and representatives by reason of claims for injury or death to persons, damages to tangible property, to the extent caused directly by any of the following: (a) any substance, condition, element, or material or any combination of the foregoing (i) produced, emitted or released from the Project or tested by ENGINEER under this Agreement, or (b) operation or management of the Project. CLIENT also agrees to require its construction contractor, if any, to include ENGINEER as an indemnitee under any indemnification obligation to CLIENT.

12. LIMITATIONS OF LIABILITY. No employee or agent of ENGINEER shall have individual liability to CLIENT.

CLIENT agrees that, to the fullest extent permitted by law, ENGINEER'S total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, ENGINEER'S negligence, errors, omissions, strict liability, or breach of contract and whether claimed directly or by way of contribution shall not exceed the total compensation received by ENGINEER under this Agreement. If CLIENT desires a limit of liability greater than that provided above, CLIENT and ENGINEER shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to ENGINEER for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL ENGINEER BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

13. ACCESS. CLIENT shall provide ENGINEER safe access to any premises necessary for ENGINEER to provide the Services.

14. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by CLIENT for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by ENGINEER for the specific purpose intended, shall be at the CLIENT'S risk. Further, all title blocks and the engineer's seal, if applicable, shall be removed if and when CLIENT provides deliverables in electronic media to another entity. CLIENT agrees that relevant analyses, findings and reports provided in electronic media shall also be provided in "hard copy" and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. CLIENT shall be afforded a period of 30 days in which to check the hard copy against the electronic media. In the event that any error or inconsistency is found as a result of this process, ENGINEER shall be advised and the inconsistency shall be corrected at no additional cost to CLIENT. Following the expiration of this 30-day period, CLIENT shall bear all responsibility for the care, custody and control of the electronic media. In addition, CLIENT represents that it shall retain the necessary mechanisms to read the electronic media, which CLIENT acknowledges to be of only limited duration. CLIENT agrees to defend, indemnify, and hold harmless ENGINEER from all claims, damages, and expenses, (including reasonable litigation costs), arising out of such reuse or alteration by CLIENT or others acting through CLIENT.

15. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

16. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

17. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for claims for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

18. DISPUTE RESOLUTION. Parties shall attempt to settle disputes arising under this agreement by discussion between the parties senior representatives of management. If any dispute can not be resolved in this manner, within a reasonable length of time, parties agree to attempt non-binding mediation or any other method of alternative dispute resolution prior to filing any legal proceedings. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

19. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

20. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including CLIENT'S contractors, if any.

21. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

22. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

PART IV

ADDITIONAL NEW YORK STATE

ENVIRONMENTAL FACILITIES CORPORATION

PROVISIONS

Professional Services Agreement

Proposal Number: _____

Project Name: _____

Project Number: _____

AGREEMENT MADE this ____ day of _____ 2018 by and between Chazen Engineering, Land Surveying & Landscape Architecture Co., D.P.C. (CELSLA) or Chazen Environmental Services, Inc. (CES), each existing under the laws of the State of New York, with their principal places of business at 21 Fox Street, Poughkeepsie, New York 12601 (hereafter referred to collectively as "Chazen") and Town of East Greenburgh (hereafter referred to as "Client").

1. **PURPOSE:** Client hereby retains Chazen to perform the services described in the attached Part I Engineer's Responsibilities, which is hereby made a part of this Agreement.

Chazen notes and affirms that both it and Delaware Engineering are coordinating Professional Service to provide the Town with the Design and Construction Administration Services necessary for the upgrade of the Town's Wastewater Treatment Facility System, both Chazen and Delaware scope should be read together to get a description of the entire Professional Service Package.

2. **COMPENSATION:** Chazen's compensation for services shall be as stated in the attached Part II Scope of Services Compensation Billing and Payment. Chazen shall submit invoices on or about the tenth day of each month. Invoices shall be payable upon receipt. Invoices not paid within 30 days will be assessed a finance charge of 1.5% per month. All amounts due and owed Chazen under this Agreement shall be paid in full at the completion of services. Chazen may refuse to release reports, maps and materials prepared by Chazen for Client until all arrearages are paid in full.
3. **COOPERATION:** Client agrees to keep Chazen informed of changes to the project scope and schedule, and shall arrange for and provide Chazen entry to property in order to perform the services. Client shall give Chazen prompt notice of any potentially hazardous or injurious conditions Client knows of or has reason to know of which may be present on property Chazen must enter. Client agrees to allow Chazen to display appropriate promotional signage during construction, and to allow Chazen to make a photographic record of the project prior to, during, and subsequent to construction. Client agrees to allow Chazen to use photographic images, along with information about the project and/or a description of the services provided, for promotional purposes without restriction or monetary compensation.
4. **PROJECT DOCUMENTS:**
- A. All Documents which may include, but are not limited to, Plans, Specifications, Survey Plats, Technical Reports and Correspondence are instruments of service with respect to this Project, and Chazen shall retain an ownership and property interest therein, including the right to reuse the Documents. The right to alter the Documents belongs only to Chazen.
 - B. Client and Client's contractors or other consultants may rely only upon printed copies (also known as hard copies) of Documents that are signed and sealed by a Licensed Professional employed by Chazen. If there is any discrepancy between printed copies and any electronic copies, the most recent version of the printed and certified copies govern.
 - C. Any electronic copies (files) provided will be provided solely as a convenience and shall NOT be considered "Contract Documents," "Construction Documents" or any type of certified document. All documents considered "Contract Documents," "Construction Documents" or any type of certified document shall consist only of printed copies having an original signature and seal of a Licensed Professional employed by Chazen.
 - D. Be advised that electronic copies of Documents can deteriorate or be inadvertently modified without Chazen's consent, or may be otherwise corrupted or defective. Accordingly, Client and Client's contractors or other consultants may not rely upon the accuracy of any electronic copies of Documents.
 - E. Any use, conclusion or information obtained or derived from electronic copies of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any use whatsoever or reliance on electronic copies of Documents.

F. Client understands that Documents are not intended or represented to be suitable for any purpose other than that for which they were created. Any reuse or modification of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any reuse or modification of Documents.

G. Client understands that it is a violation of New York State Education Law for any person to alter in any way any Document that has been signed and sealed by a Professional Engineer or Land Surveyor, unless he or she is acting under the direction of a licensed Professional Engineer or Land Surveyor and that the altering professional signs and seals the document and describes the alteration.

5. **INDEMNITY & LIMITATION OF LIABILITY:** Client and Chazen have discussed the risks, rewards and benefits of the project and Chazen's fees for services under this Agreement. Client and Chazen have also discussed the allocation of risk associated with their respective duties under this Agreement and agree, to the fullest extent permitted by law:

A. Chazen shall carry and maintain Workers Compensation, General Liability, Automobile Liability and Professional Liability insurance. Chazen will provide Client certificates of insurance upon request. Chazen agrees to indemnify Client against loss caused by the negligent actions of Chazen, and the employees and subcontractors of Chazen, within the terms and conditions of the insurance coverage maintained by Chazen, subject to the limitation of liability set forth in paragraph 5(C) below. Chazen will not be responsible for any loss or liability, or any violation of law, rule, regulation or decree by Client or the employees, agents, contractors, or consultants of Client.

B. Chazen agrees that it will not bring hazardous or toxic materials onto Client's property. Client understands that the ordinary course of work performed by Chazen may result in the excavation and relocation of hazardous or toxic materials that were on or under the property before Chazen began its work. Client understands that Client is solely responsible for the cost of investigating, removing, and remediating such materials.

C. Chazen's liability for claims related to professional services errors or omissions under this Agreement, however arising, shall be limited to the lesser of \$1,000,000 or the total compensation received by Chazen from Client, and Client hereby releases Chazen from any liability or contribution above such amount. This limitation of liability shall include but not be limited to Chazen's negligence, errors, or omissions. In no event shall Chazen be liable for incidental or consequential damages, including loss of profits or revenue resulting from any cause or causes.

6. **TERMINATION:** In the event of substantial failure by either party to perform under this Agreement, the aggrieved party may terminate this Agreement upon seven (7) days written notice. If this Agreement is terminated, Client shall remit all monies due Chazen within 30 days. Chazen at its sole discretion, may terminate this Agreement when it reasonably believes there may be condition(s) which threaten the health and safety of Chazen personnel and subcontractors. Chazen assumes no duty to report hazardous or dangerous conditions not caused by Chazen and shall rely exclusively upon Client to report any such conditions.

7. **SEVERABILITY:** If any provision of this Agreement is held invalid such provision shall have no effect, but all remaining provisions shall continue in full force and effect. Each provision of this Agreement shall be interpreted so as to render it valid.

8. **NOTICES:** All notices shall be in writing and shall be sufficient if sent by first class mail or overnight mail to the addresses of Client and Chazen as shown herein. Notices shall be deemed as received three (3) business days after mailing. Each party hereby agrees to accept all mailed and hand delivered communications.

9. **ENTIRE AGREEMENT:** This Agreement and any attachments and exhibits identified herein represent all of the promises, agreements, conditions, understandings, and undertakings between Client and Chazen. Attachments are:

Part I Engineers Responsibilities and Scope of Services, Part II Compensation, Billing and Payment, EFC required Terms for Project Contracts and Subcontracts and Subcontracting dates 10/01/12 (5 pages).

Professional Services Agreement
Project Name: _____

Proposal Number: _____
Project Number: _____

10. **AMENDMENTS:** This Agreement shall bind Client and Chazen and their successors and assigns. The parties may, by written agreement(s), modify and amend this Agreement. Any such amendment must be in writing and be signed by the party against whom enforcement of the amendment is sought. No breach of any part of this Agreement shall be deemed waived unless expressly waived in writing by the party who might assert such a breach. The failure of any party to insist in any one or more instances upon strict performance of this Agreement shall not be construed as a waiver of the right to insist upon strict performance.
11. **GOVERNING LAW:** This Agreement shall be governed and construed by the laws of the State of New York. For purposes of any legal action or suit related to or arising out of this Agreement venue shall be Dutchess County, New York.
12. **COUNTERPARTS:** This Agreement, and any amendments or revisions thereto, may be executed in two or more counterparts each of which shall be deemed an original, but which together shall constitute one and the same instrument(s).
13. **REPRESENTATIONS:** Client and Chazen state that each has full power and authority to make, execute and perform this Agreement. Signatory for Client states that he is an officer, owner, partner, agent or attorney for Client. Neither Client nor Chazen is bankrupt or have availed themselves of any debtor's remedies nor are currently contemplating such.

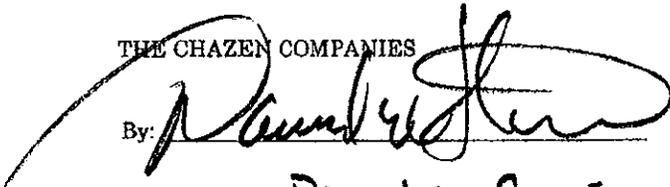
CLIENT _____

By: _____

Printed Name: _____

Date: _____

THE CHAZEN COMPANIES

By:  _____

Printed Name: Daniel W. Stone

Date: 11/01/13

PART I

ENGINEER'S RESPONSIBILITIES

PROJECT UNDERSTANDING and SCOPE of SERVICES and SCOPE OF SERVICES

Task 001 – Design and Regulatory Approval

Design services include all efforts to secure approval of Final Engineering Plans from the NYSDEC and other regulatory agencies as necessary for the upgrades to the wastewater treatment plant. Chazen will provide the following services during this task:

1. Permits as required for the construction activities.
2. NYSDOT Highway Work Permits.
3. SPDES permit for discharge of construction stormwater.
4. SWPPP documents
5. Site Survey
6. Site Geotechnical Exploration and Report
7. Project Quality Control/Quality Assurance
8. Attend monthly project team meetings during design activities

Task 002 – Bidding Services

Chazen will provide assistance to the Town for the bidding of the project and will ensure that the bid process is carried out in compliance with the Contract and applicable State, Federal and local laws and statutes. The following services will be provided by Chazen during this task:

1. Review services for the bids received and make recommendations with Delaware Engineering.
2. Attendance at the Pre-bid conference.

Task 003 – Construction Engineering

Chazen will provide Construction Engineering support including technical assistance with regard to the engineering design and review of material and equipment submittals. Construction engineering services will include the following elements:

1. Attendance at the Preconstruction meeting.
2. Attendance at monthly meetings during the construction period.
3. Quality Control/Quality Assurance during the construction period.

Task 004 – Construction Administration

Chazen will provide Construction Administration during the entire duration of the project. It is estimated that this project will take sixteen (16) months to complete. Construction engineering services will include the following tasks:

- a. General administration of the project.
- b. Coordination of preconstruction and regular construction meetings with the selected contractor(s) to establish working protocols including health and safety plans.
- c. Review of work schedules
- d. MWBE Reports and Contractor Coordination to meet local and State funding requirements
- e. Review and coordination of EFC and Contractor Requests for Reimbursement.
- f. Directing the contractor in defining staging areas and ensuring that pre-construction activities occur as required.
- g. Ensuring that all appropriate forms and reporting documentation is compiled and ready for use during construction activities.
- h. Prepare and issue work directives and Change Orders as necessary.
- i. Review, approve and witness all required tests and start up procedures.
- j. Review, approve and certify all contractor payment requests and confirm appropriate documentation of wage scales is maintained.
- k. Preparation of punch lists of outstanding issues at the time of substantial completion.
- l. Prepare and review all Close-out documents including record drawings.
- m. Provide Certification of Substantial Completion, final payment and release of retainage.

Task 005 – Construction Inspection

Chazen will provide Construction Inspection during the entire duration of the project. It is estimated that this project will take sixteen (16) months to complete. Construction engineering services will include the following tasks:

- a. Fulltime construction representation will be provided for the duration of the project. It is expected that the construction period for this project will be 16 months. The construction representative will attend all monthly progress meetings.

Task 006 – Post-Construction Services

Chazen will provide Post-Construction Services at the completion of the project. Post construction engineering services will include the following tasks:

1. As constructed survey.
2. As-constructed drawings in ACAD format and hard copies as directed by the Town of East Greenbush.
3. Continuing consulting services relative to warranty and start up for six months.

PART II

COMPENSATION BILLING and PAYMENT
Limitations

This Proposal includes the cost for only those services specifically outlined above.

Professional Services Fee Schedule

Chazen proposes to bill each task as indicated in the following Fee and Time Schedule Summary. Invoices will be issued monthly for all services performed during that month, and are payable upon receipt. Lump Sum tasks will be billed commensurately with the percentage of the task which has been completed. Time and Materials tasks will be billed based on the actual hours and reimbursable expenses incurred. Fees listed for Time and Materials tasks are estimates only. Chazen will make its best effort to complete each of these tasks within the estimated amounts; however it is possible that it will be necessary to exceed these amounts in order to complete the scope of services for each task. We will not exceed any estimated fee amounts without first notifying you.

Reimbursable expenses which include our direct expenses, such as mileage, overnight mailings, photocopying and map reproductions will be tracked under a separate task, Task RE and will be billed for direct cost of the work to you.

| Tasks | | Fee Estimates | | |
|----------|--------------------------------|---------------|--|--|
| Task No. | Task Description | Lump Sum | Time and Materials Estimate ⁽¹⁾ | Sub-Consultant Estimate ⁽¹⁾ |
| 001 | Design and Regulatory Approval | \$132,500 | --- | \$8,500 |
| 002 | Bidding Services | \$8,100 | --- | --- |

| Tasks | | Fee Estimates | | |
|----------|----------------------------------|---------------|--|--|
| Task No. | Task Description | Lump Sum | Time and Materials Estimate ⁽¹⁾ | Sub-Consultant Estimate ⁽¹⁾ |
| 003 | Construction Engineering | \$34,500 | --- | --- |
| 004 | Contract Administration | \$121,800 | --- | --- |
| 005 | Construction Inspection Services | | \$286,500 | |
| 006 | Post Construction Services | \$22,500 | | |
| RE | Reimbursable (~10% of fee) | --- | \$45,600 | --- |
| Subtotal | | \$319,400 | \$332,100 | \$8,500 |
| Total | | \$660,000 | | |

¹ Fees listed for Time and Materials tasks, Sub-Consultants, and Reimbursable Expenses are estimates only. Chazen will bill for actual hours and reimbursable expenses incurred, and will make its best effort to complete each of these tasks within the estimated amounts, although it is possible that it will be necessary to exceed these amounts in order to complete the scope of services for each task. We will not exceed any estimated fee amounts without written authorization from you. **Note: The fee for reimbursables presented above includes the cost difference between our surveyors standard pay rates and the current New York State Department of Labor.**

EFC REQUIRED TERMS FOR PROJECT CONTRACTS AND SUBCONTRACTS

In accordance with the terms and conditions set forth in Section 5.1 of the Project Finance Agreement, Recipient agrees that the following language will be included in all contracts and subcontracts regarding the Project including but not limited to those relating to construction, engineering, architectural, legal and fiscal services, as required by federal and State laws, regulations, and executive orders applicable to this Project:

DEFINED TERMS:

The term "Bid Packets" means the New York State Revolving Fund (SRF) Bid Packet for Construction Contracts and Bid Packet for Non-Construction Contracts and Service Providers, available at www.efc.ny.gov/mwbg.

The term "contractor", as used in this contract or subcontract, means, and applies to, all Service Providers, consultants and service providers as hereinafter defined, unless specifically referred to otherwise.

The term "subcontractor", as used in this contract or subcontract, means, and applies to, any individual or business enterprise that has an agreement with a contractor.

The term "EEO policy statement" means a statement of the contractor and subcontractor setting forth at least the following:

- (i) A statement that the contractor will provide for and promote equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination and will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on contracts relating to the Project.
- (ii) An agreement that all of contractor's solicitations or advertisements for employees will state that, in the performance of the contract relating to this Project, all qualified applicants will be provided with equal employment opportunity free of discrimination and harassment against any person on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law.
- (iii) An agreement to request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate or harass on the basis of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein.
- (iv) An agreement to comply with the provisions of the Human Rights Law (Article 15 of the Executive Law), including those relating to non-discrimination on the basis of prior criminal conviction and prior arrest, and with all other State and federal statutory constitutional non-discrimination provisions.

The term "EFC" means the New York State Environmental Facilities Corporation.

The term "EPA" means the United States Environmental Protection Agency.

The term "ESD" means the Empire State Development Corporation - Division of Minority and Women's

*The SRF Bid Packet
Guidance for SRF Service Providers*

Revision Date: 10/1/2012

Business Development.

The term "Recipient" means the party, other than EFC, to a grant agreement or a project finance agreement with EFC through which funds for the payment of amounts due hereunder are being paid in whole or in part.

The term "Service Providers" means professional services, such as legal, engineering, financial advisory or other professional services, supplies, commodities, equipment, materials, and travel.

The term "State" means the State of New York.

INTERPRETATION:

This contract is subject to Article 15-A of the Executive Law (Article 15-A) and 5 NYCRR 140-145 (the Regulations) and shall be considered a State Contract as defined therein. If any of the terms herein conflict with Article 15-A or the Regulations, such law and regulations shall supersede these requirements.

REPRESENTATIONS AND ACKNOWLEDGMENTS OF CONTRACTOR & SUBCONTRACTOR:

The contractor acknowledges that funds for the payment of amounts due under this contract are being provided in whole or in part subject to the terms and conditions of a grant agreement or a project finance agreement with EFC.

The contractor represents that it has submitted an EEO policy statement, an EEO Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (Service Providers only), prior to the execution of this contract.

Suspension/Debarment - The contractor is not a debarred or suspended party under 2 CFR Part 180, 2 CFR Part 1532 and 40 CFR Part 32. Further, neither the contractor nor any of its subcontractors have contracted with, or will contract with, any debarred or suspended party under the foregoing regulations or with any party that has been determined to be ineligible to bid under Section 316 of the Executive Law.

EQUAL EMPLOYMENT OPPORTUNITY (EEO), AFFIRMATIVE ACTION, MWBE AND OTHER COVENANTS:

Contractor and subcontractor shall comply with all federal and State laws, regulations, and executive orders applicable to this Project, and shall provide such documentation, including periodic reports, as may be requested from time to time and as set forth in guidance documentation available at www.efc.ny.gov/mwbe, including but not limited to the Bid Packets.

With respect to this contract, the contractor and subcontractor shall undertake or continue existing programs of affirmative action and equal employment opportunity to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, color, national origin, age, disability, sex, gender, sexual orientation, religion, genetic characteristics or information, status as a victim of domestic violence, veteran or military status, marital or family status, or any other discrimination prohibited by law. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

MWBE

MWBE Goals - The contractor agrees to pursue MWBE goals in effect at the time of execution of this contract.

| | |
|--------------|-----|
| All counties | 20% |
|--------------|-----|

*May be any combination of MBE and/or WBE participation

Contractors shall solicit participation of MWBE contractors (including subcontractors, consultants and service providers) for SRF-funded projects in accordance with the aforementioned goals. The contractor must submit sufficient documentation to demonstrate good faith efforts to provide opportunities for MWBE participation for work related to the SRF-funded project in the event respective goals are not achieved. Guidance pertaining to documentation of good faith efforts is set forth in the Bid Packet.

The contractor agrees that for purposes of providing meaningful participation by MWBEs on the contract and achieving the goals, contractor will reference the directory of New York State Certified MWBEs found at the following internet address: <http://www.esd.ny.gov/mwbe.html>.

Subcontractors who in turn subcontract work shall also comply with MWBE requirements for that contract.

MWBE Utilization Plan (MWBE Utilization Plan requirements apply to contractors and are submitted prior to execution of a contract.) – Each contractor shall prepare and submit to the Recipient for approval an MWBE Utilization Plan, and any revision or amendment thereto, that provides information describing MBEs and WBEs to be utilized at various times during the performance of this contract. The MWBE Utilization Plan shall identify the contractor's proposed MBE and WBE utilization for this contract and the MWBE participation goals for this contract as established by EFC. The MBEs and WBEs identified in the MWBE Utilization Plan must be certified by, or have applied for certification from ESD.

In the event that contractor's approved MWBE Utilization Plan does not propose achievement of the MWBE participation goals for this contract, contractor shall complete a waiver request as hereinafter referenced.

Submission – Within 30 days of execution of this contract, contractor shall submit to the Recipient copies of all signed subcontracts, agreements, and/or purchase orders referred to in the MWBE Utilization Plan.

Compliance – Contractor agrees to adhere to its approved MWBE Utilization Plan for the participation of MWBEs on this contract pursuant to their respective MWBE goals.

Waivers – If contractor's application of good faith efforts does not result in the utilization of MBE and/or WBE firms to achieve the aforementioned goals, prior to execution of a contract, the contractor shall complete the waiver request portion of the MWBE Utilization Plan and submit it to the Recipient. Contractor is entitled to receive a written notice of acceptance or denial within 20 days of receipt. Upon receipt of a notice of deficiency from Recipient, Contractor shall respond to such notice within 7 days. Such response may include a request for a total or partial waiver of the aforementioned goals.

Contractor shall comply with the requirements set forth in the Bid Packets regarding waivers.

Required Reports - MWBE Monthly Report – Contractor agrees to submit a report to the Recipient by the 3rd business day following each end of month over the term of this contract documenting the progress made towards achievement of the MWBE goals of this contract.

EEO

EEO Workforce Staffing Plan – All Service Provider (non-construction) contractors and subcontractors shall submit an acceptable EEO Workforce Staffing Plan setting forth the anticipated work force to be utilized on such contract or, where required, information on the service provider's total work force, including apprentices, broken down by specific ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Recipient. The EEO Workforce Staffing Plan is submitted prior to execution of a contract.

Required Reports - EEO Workforce Utilization Reports – Applies to Service Provider (Non-Construction) Contracts and Subcontracts

During the term of this contract, the contractor and subcontractor shall update and provide notice to the Recipient of any changes to the previously submitted Staffing Plan in the form of an EEO Workforce Utilization Report. Contractor shall submit this information on a quarterly basis during the term of this contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information. In the event a Contractor and Subcontractor's workforce does not change within the Quarterly period, the Contractor shall notify the Recipient in writing.

Required Reports - EEO Workforce Utilization Reports – Applies to Construction Contracts and Subcontracts

During the term of this contract, the contractor and subcontractor shall submit to the Recipient EEO Workforce Utilization Reports. Contractor and subcontractor shall submit this information on a monthly basis to report the actual labor hours utilized in the performance of this contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The EEO Workforce Utilization Report must be submitted to report this information.

All EEO Workforce Utilization Reports submitted by the contractor and subcontractor shall reflect a separation of the workforce utilized in the performance of this contract from contractor or subcontractor's total workforce. Contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided relates to the actual workforce utilized on this contract. If contractor or subcontractor fails to separate the workforce to be utilized on this contract from the total workforce as determined by Recipient contractor shall submit the EEO Workforce Utilization Report and indicate that the information provided is contractor or subcontractor's total workforce during the subject time frame, not limited to work specifically under this contract.

Disadvantaged Business Enterprises - The contractor and subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor and subcontractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor and subcontractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies. Contractors and subcontractors shall comply with the requirements set forth in the Bid Packets regarding Disadvantaged Business Enterprises.

REMEDIES:

Upon a determination by the Recipient of contractor's non-responsiveness, non-responsibility or breach as a result of a failure to comply with the requirements of Article 15-A and the Regulations, Recipient may withhold funds under this contract or take such other actions, impose liquidated damages or commence enforcement proceedings as set forth herein or as otherwise allowed by law or in equity.

If contractor or subcontractor fails to submit to Recipient an EEO policy statement consistent with the provisions set forth in clauses (i), (ii), (iii) and (iv) of the definition thereof and within the timeframe required therefor, Recipient may declare this contract to be null and void.

Contractor and subcontractor agree that a failure to submit and/or adhere to its EEO policy statement, EEO

Workforce Staffing Plan for Service Provider (Non-construction) Contracts (if applicable), and an MWBE Utilization Plan (contractors only), and any other required periodic reports, shall constitute a material breach of the terms of this contract, entitling Recipient to any remedy provided herein, including but not limited to, a finding of contractor non-responsiveness.

Liquidated or Other Damages - If it has been determined by the Recipient or NYSEFC that the contractor is not in compliance with the requirements herein or refuses to comply with such requirements, or if contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, in accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, contractor shall be obligated to pay to Recipient liquidated damages or other appropriate damages as determined by the Recipient or EFC.

Liquidated damages shall be calculated as an amount not to exceed the difference between:

1. All sums identified for payment to MWBEs had the contractor achieved the contractual MWBE goals; and
2. All sums actually paid to MWBEs for work performed or materials supplied under this contract.

In the event a determination has been made by the Recipient or EFC which requires the payment of liquidated damages and such identified sums have not been withheld, contractor shall pay such liquidated damages to Recipient within sixty (60) days after they are assessed unless prior to the expiration of such sixtieth day, contractor has filed a complaint with ESD pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director of ESD renders a decision in favor of Recipient.

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