

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

**REGULAR MEETING OF THE CITY COUNCIL  
COUNCIL CHAMBERS, CITY HALL  
Wednesday, June 14, 2023  
6:30 p.m.**

Residents may email comments regarding the public hearing to:  
**publichearingcomments@ryeny.gov**. All comments must be received by 4:00 pm on the day of the meeting. The subject of the email should reference the hearing topic. Please include your name and address.

*Please note: The Council will convene at 5:30 p.m. and it is expected they will adjourn into Executive Session at 5:31 p.m. to discuss pending litigation, personnel matters and pending contracts.*

1. Pledge of Allegiance.
2. Roll Call.
3. Draft unapproved minutes of the Regular Meeting of the City Council held May 24, 2023.
4. Consideration of proposed policies for the City of Rye Fire Department:
  - Policy 906 – Public Employee Safety and Health Bureau Inspections
  - Policy 907 – Division of Safety and Health Notification of Illness, Injury or Death
  - Policy 1010 – Driver License Requirements
  - Policy 1011 – Reporting for Duty
  - Policy 1029 – Uniform Regulations
  - Policy 1030 – Badges
  - Policy 1031 – Identification Cards
5. Open a public hearing to adopt a new local law amending Chapter 1-12, “Definitions” under “General Provisions,” to add a definition for “holiday,” and create a uniform use of the word “holiday” throughout the City Code of the City of Rye by also amending “Telecommunications,” §185-4, and “Vehicles and Traffic” §191-38.1, §191-42, §191-46.
6. Continued Public Discussion and Possible Consideration of City Council Resolution Re-Stating its role as Lead Agency and Directing City Staff and Consultants to Prepare the necessary SEQRA and other documentation for the City Council’s Consideration

in Connection with the Construction of a Turf Field at Nursery Field [Please click [HERE](#) for links to information and prior discussions]

7. Members of the public may be heard on matters for Council consideration that do not appear on the agenda.
8. Consideration to set a public hearing for July 12, 2023, to amend Chapter 191, Article III “Parking Regulations” of the Code of the City of Rye, by amending § 191-21 “Parking, Standing or Stopping.” to prohibit parking, standing or stopping from 100 ft North of Parsons Street to the entrance of Old Post Road on the west side of Boston Post Road.
9. Resolution authorizing the City Manager to enter into a Right-of-Way and Corridor Agreement between the City of Rye and TC Systems, Inc to grant permission for TC Systems to utilize public rights-of-way within the geographic boundaries of the City, to construct, maintain and operate fiber optic cable and related necessary equipment.
10. Resolution consenting to the re-appointment of Mr. Bart DiNardo to the Emergency Medical Services Committee as the City of Rye community representative.
11. Authorization for City Manager to enter into an Inter-municipal Agreement with Westchester County for providing a Positive Youth Development Program.

#### CONSENT AGENDA

- a) Consideration of a request from Sleep in Heavenly Peace (SHP) Beds Charity to use the City Hall parking lot on Saturday, June 24, 2023 from 8:00 am – 2:00 pm to build beds for children in need. Rain date would be Saturday, July 8, 2023.
- b) Consideration of a request by Christ’s Church for use of the City streets (Rectory Street) on the following dates:
  - 6/11/23, 9:00am-1:00 pm - Annual Church Picnic (retroactive)
  - 9/10/23, 9:00am-1:00pm - Homecoming Church Picnic
  - 10/21/23, 8:00-5:00pm - CCNS Fall Family Day
  - 12/2/23-12/3/23, 8:00am-5:00pm - Annual Christ's Church Christmas Tree Sale
  - 5/19/24, 9:00am-1:00pm - Pentecost Sunday Food Trucks
  - 6/2/24 - 9:00am-1:00pm - Annual Church Picnic
12. Old Business/New Business.
13. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, July 12, 2023, at 6:30 p.m.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under “RyeTV Live”.

***DRAFT UNAPPROVED MINUTES*** of the Regular Meeting of the City Council of the City of Rye held in City Hall on May 24, 2023, at 6:30 P.M.

PRESENT:

JOSH COHN, Mayor  
LORI FONTANES  
BILL HENDERSON  
CAROLINA JOHNSON  
JOSHUA NATHAN  
JULIE SOUZA  
BENJAMIN STACKS  
Councilmembers

The Council convened at 5:30 P.M. Councilwoman Souza made a motion, seconded by Councilman Stacks, to enter into executive session to discussion litigation and personnel matters. The Council reconvened in a public meeting at 6:30 P.M. The meeting was held in City Hall and streamed live at [www.ryeny.gov](http://www.ryeny.gov) for public viewing.

1. Pledge of Allegiance.

Mayor Cohn led the Council in the Pledge of Allegiance.

2. Roll Call.

The City Clerk called the roll and there was a quorum.

3. Draft unapproved minutes of the Regular Meeting of the City Council held May 10, 2023.

Councilwoman Souza made a motion, seconded by Councilman Stacks, to adopt the minutes of the Regular Meeting of the City Council held May 10, 2023.

4. War Memorial Committee Update.

City Clerk Carolyn D'Andrea provided an update from the War Memorial/ Veteran Monuments Committee which regularly met to strategize the mission to ensure all Rye veterans were represented on memorials and monuments. The memorials had not been updated since the Vietnam Honor Wall was completed in the 1980s. In the 40 years since Vietnam the list of Rye veterans had grown, and the memorials were due for an update. Any Rye veteran who met the service criteria and had proof of service could apply to have their name added via an online form on the City website, or they could visit the City Clerk's office.

5. Flooding Update.

Mayor Cohn shared an update from NYS DEC. The SLR Blind Brook Resilient Stream Study was finalized and will be available on the Rye website. DEC narrowed their caution against taking on culvert work at I-95 and Metro North overpass until significant upstream mitigation was

in place. Rye asked DEC to provide local cost share needed for a US Army Corps Engineers study of the Blind Brook watershed within the CAP-205 program, and DEC expressed interest, though there was still clarification needed.

City Manager Greg Usry stated the consolidating funding application for grants was out and due at the end of July, and the City was looking at potential opportunities. The Environmental Bond Act passed in the fall of 2022 was in its infancy in terms of applications and processes, and Mr. Usry estimated it would be six to nine months before the City had more information.

6. Recognition of City staffers, Ryan Coyne, Ricky DiRago and Sophie Diamond as well as local business, Carpet Trends, for receiving awards from the State and County Recreation Associations.

Erin Mantz, Rye Recreation Superintendent, shared well-deserved recognition for City staffers and local entities. Superintendent Mantz congratulated the following for receiving well-deserved recreation awards: Ricky DiRago for the Young Professional Award, Sophie Diamond for the Staff Associate Award, Ryan Coyne for receiving the Austin Welch Pierre Award, and local business Carpet Trends for receiving the Irwin “Red” Klein Commercial Award. She spoke in detail about each recipient and thanked them for their years of hard work and recreation efforts, contributing to the entire community.

7. Presentation of 2023 street resurfacing plan.

DPW Superintendent Coyne introduced city street-resurfacing consultant, Gordan Daring of VHB, to present the update to the Council. He gave an update of the Pavement Condition Index (PCI) ranking update. The quantifying value of the PCI system ranks from 1-100, and Rye has a current impressive average PCI of 84. He reported that approximately 23 miles, half the street miles in Rye, did not need any work. About 16 miles of streets needed structural improvement estimated at \$8.5 million, and about 13 miles needed routine or preventive maintenance at \$200,000. Only one mile needed the most extensive work, base rehabilitation, valued around \$655,000.

There were three funding scenarios that were discussed: \$500K, \$1M, and \$1.5M. For the \$1M scenario, Gordon indicated that the most significant upcoming resurfacing would occur at the south end of Boston Post Road, and on Grace Church from Midland to Forest, and on Stuyvesant. Mr. Daring shared the list of proposed resurfacing projects for 2023. Mayor Cohn explained that the City budget included \$1M, an amount indicated to keep the PCI trending upward. Based on Gordon’s explanation, investing \$1M in roads for 2023 would lower Rye’s PCI ranking from 84 to 82. There was discussion about considering this in the next budget.

Mr. Daring estimated \$1.25M was in the ballpark for maintaining the above-average 84, and \$1.5M to increase the average. His experience with streets in the Northeast was that mid-80s was the upper limit of possible due to traffic and weather conditions. There was talk regarding 2023 paving, which would mostly take place in the summer months. Mayor Cohn commented that streets were usually repaired in a worst-to-first order, which was why certain paving projects took

precedence. Mr. Usry confirmed for Councilwoman Fontanes that the utility companies marked streets and would repave when finished with their work.

Stephen Passalacqua, 93 Grapal St., addressed the Council and spoke about the regular utility work by ConEd being performed shortly after the City paved streets. He asked if this plan included an overlay with the ConEd plan for the gas pipe replacement to avoid these situations, and inquired regarding communication between the City and ConEd. Councilwoman Souza raised the point that there were always emergency situations that the City could not control. Mr. Usry said the City was always interested in saving taxpayer money by postponing projects to utilize ConEd resources, and they coordinated as much as possible.

8. Update on potential Nursery Field project.

Mayor Cohn invited consultant David Nardone to update the Council on the Nursery Field project. There was discussion regarding Nursery Field being located in a FEMA-designated flood plain. Mr. Nardone said that the analysis in 2019 showed that if the field surface was raised out of the flood plain, the impact of bringing in fill to raise the field would be negligible because of the large size of the flood plain. Councilwoman Fontanes said that she noted a discrepancy with the current designation of wetlands at the field and expressed concern about building in a floodplain. Councilman Nathan asked what remediations would keep adjacent homes from flooding with displaced water, and Mr. Nardone replied flood mitigation could include vertical drainage and storage under the field to release water at a slower rate.

Mr. Nardone explained that Nursery Field's natural soil condition made it limited in the amount of play it could withstand and could be significantly affected by weather conditions. In 2018, 40% of field programming was cancelled for unplayable conditions. Councilwoman Fontanes asked if there was data for other years, and Mr. Usry replied the data was consistent throughout the years. Mr. Nardone said that currently, Nursery Field was in poor condition due to inadequate water infiltration. The finished elevation would be 6 feet above the 100-year flood elevation. He explained that the proposed field layout was shifted south to fit within the current fence line with no impact to the existing wetlands. The proposal for Nursery Field included four turf options: native topsoil, hybrid grass, sand-based topsoil, and synthetic.

Councilman Nathan asked about the trend of colleges changing synthetic fields back to grass, and Mr. Nardone's experience was most colleges have separate fields for each sport and use the appropriate turfs. He further said that installing hybrid turf at Nursery Fields would increase its programming capacity. Councilman Nathan asked about the data regarding injuries on natural turf versus hybrid, but Mr. Nardone replied that reliable data was not available.

Mr. Nardone explained how surface drainage would help mitigate standing water and runoff. The hybrid turf model would place sand that drained water vertically into storage containers with modifiable release. He said that sand-based fields generally provide a firmer, more consistent playing surface than native soil fields that do not drain as effectively. Mr. Nardone explained to Mayor Cohn that it was a very specific type of sand, a mix standardized by the golf course industry. Mr. Nardone explained that a carpet to support soil and grass would be laid atop the sand, and then a machine would stitch synthetic turf fibers into the sand to hold the carpet in

place, a system utilized by the World Cup soccer fields. The stitching system also protects grass roots and cools the sand and field surface.

Councilman Nathan asked about the durability of hybrid turf compared to synthetic and natural soil. Mr. Nardone replied that a hybrid field should support 30 hours of play per week, which was 10 more hours than nature soil limits and around 15 hours less than synthetic. After much investigation, Mr. Nardone was confident the hybrid turf would work for Nursery Field. A synthetic field acts as a retention basin, and vertical infiltration prevents surface runoff. He also said that carpets of synthetic turf do not require infill.

Mr. Nardone summarized the pros and cons of native and sand-based rootzones. The Council was interested in what would happen in the event of a flood. Mr. Nardone thought flood issues would be reduced because Nursery Field was in a flood plain, not a flood way, where water rushes through faster. He said that a less-buoyant shock bed would be installed under the turf. Covering the field during heavy rain would not be necessary if the field was built at the proposed elevation with a 3-foot incline at one end.

Mr. Nardone said that natural grass systems required use of fertilizers and pesticides. If a synthetic turf was chosen, crumb rubber would not be considered because it is not recyclable after replacement. Mr. Nardone stated that studies have shown no adverse health effects from playing sports on synthetic turf. He also said that PFAS (Per- and polyfluoroalkyl substances) were not a concern for polyethylene synthetic turf. Mayor Cohn asked if it was possible to build a field wherein every component met strict California Prop 65 standards; Mr. Nardone confirmed it was possible, as was independently testing every component before it was chosen.

Mr. Nardone shared the options for infill other than recycled crumb rubber, including wood chips, coconut husks, walnut shells, and a variety of synthetics. Considerations for choosing infill are surface temperature, frequency of replacement, and drainage potential. Natural infill tended to stay cooler than rubber infill but required more maintenance in high-traffic areas on the field, such as where referees run repeatedly during games.

Turf types were compared based on maintenance needs. Mr. Nardone provided the following explanations for each type of field: pristine natural grass required mowing, fertilization, aeration, overseeding, and control of insects and weeds, and the needs could vary from year to year based on field usage and weather. Synthetic turf needed regular grooming, sweeping, and removal of metal debris with a magnet. Specialized companies and machines could remove and recycle synthetic turf when it needed replacement, and the sand base was also recyclable.

Mr. Nardone provided a breakdown of estimated costs for each type of turf:

	<u>Installation</u>	<u>Annual Maintenance</u>
Native topsoil	\$600K - \$800K	\$40,000
Hybrid grass	\$800K - \$1M	\$40,000
Sand-based topsoil	\$800K - \$1.35M	\$70,000
Synthetic turf	\$1.3M - \$1.7M	\$20,000

Councilwoman Fontanes referenced a letter stating that it was anticipated that Nursery Field wetlands would be regulated by the US Army Corps of Engineers, but she had not heard the point raised thus far. Mr. Nardone agreed there would likely be permits required and oversight. He explained to Mayor Cohn that it was possible to increase the water retention capacity of a synthetic grass field to more than two inches. Flooding of Nursery Field could occur in heavy rainfall with simultaneous ocean surge, and how flooding affected the turf depended on the type of turf chosen, but there were options to prevent a synthetic field from floating away.

Bart DiNardo, Recreation Commission Chair, joined the discussion to share the Commission's process of researching and supporting the consideration of Nursery Field for a turf project. He explained that the field was selected based on years of investigation and studies done on athletic fields and available space in Rye. Mr. DiNardo described why other fields were not chosen for consideration, and that field user groups were consulted. The Commission chose Nursery Field primarily because it lost significant playing hours due to poor field conditions. A group of residents had stepped forward to fund the project, and he thought it was an opportunity for Rye to consider. Schools often utilized fields like Nursery and would benefit from increased playing time on improved turf.

Mayor Cohn invited the public to speak.

Laurence Lafforgue, 1 Ormond Pl., was concerned about improving Nursery Field, and recommended that the Council consider another location. She referenced a petition with 400 resident signatures opposing the project. She stated concern over flooding, wetlands, changing the neighborhood, and the environment. She felt that a turf field would only benefit private sports groups, and not the entire community.

Drew Fung, 84 Elmwood Ave., identified himself as a Rye resident for 28 years and thought the presentation was helpful. He said simple was always best. He urged the Council to spend more time analyzing the options. He thought more information should be shared about the financial underwriting of the endeavor.

Cindy Kuster, 60 Elmwood Ave., thought the field would not fit with the neighborhood character. Wetlands were important for the environment and laws that protect them should be upheld. She thought bringing in tons of fill would increase the flooding in the area, not decrease it.

Sue Drouin, 57 Morehead Dr., said she did not understand how Rye was preserving the wetlands by building a structure on top of it. She said that perhaps Rye could purchase other land for a synthetic field. She read a letter from former Councilwoman and Planning Commission member Laura Brett. Ms. Brett was concerned the City's wetland protections will be undermined by putting a turf field in the wetland buffer and affect the City's ability to defend lawsuits when the Planning Commission denies wetland permits. The letter said that building a turf field in a flood zone could put the City at risk for litigation with neighbors of Nursery Field if their homes experience flooding in future storms.



Jorge Otero-Pailos, 1 Ormond Place, identified himself as a licensed architect, professor, and director of Historic Preservation at Columbia University. He was concerned that the Nursery Field project was only being studied according to the narrow interests of one group. He said that the primary materials in the proposal were concrete and plastic, both materials that make the environment unhealthy in different ways. He further stated that concrete was responsible for 8% of global CO2 emissions, therefore nature-based solutions were a priority. He said that the State Department presented research showing the extent of environmental damage done by plastics and called upon the building industry to reduce plastics and increase nature-based solutions. He found it irresponsible to put petrochemical plastics of any type on a wetland. He encouraged the Council to keep the field grass and preserve the natural ecosystem for Rye children.

Irwin Lefkowitz, 38 Oakwood Ave., agreed with other speakers but wanted to be very specific: he did not think the field was drainable. On the east side there was a 20-ft hill with paved driveways that would run water into the field. He said that the City proposed to spend a lot of money on a big piece of plastic that would be wet all the time.

Suki van Dyke, 62 Garden Dr., introduced herself as a Rye resident for 29 years. She said that the last time the issue came up for discussion was February 2020. She said that funds would come from a group of neighbors donating \$2 million for a synthetic turf field. Three years later the group was reconstituted but had the same objective. She did not understand how it was possible to be at the point of receiving the letter from the Rec Commission explaining their support for Nursery Field. She argued that the amount of opposition in the neighborhood indicated the Council should ask why Nursery Field and why now.

Councilwoman Souza read the letter Ms. Van Dyke referenced, written on behalf of the Board of Directors of Let the Kids Play, a nonprofit started by private citizens with a mission to raise money, awareness, and support from the Rye community to bring more usable outdoor play spaces to Rye, including the addition of turf fields. The board supported science indicating outdoor play and organized sports have significant positive benefits to children's physical, social, emotional, and mental health. The board was committed to bringing year-round, durable fields for children in Rye. \$1.5 million in pledges was secured from private citizens to fund a turf field in Rye, and the board was confident there would eventually be enough to fully fund the construction costs and a wetlands study post-construction.

Addressing a question from the public, Councilwoman Souza explained that Let the Kids Play raised funds for a turf field to be chosen by Rye Rec Commission, and the Commission recommended Nursery Field to consideration. To clarify for Ms. Van Dyke, the mayor stated the recommendation was the same as the one given in 2020.

Chelsey Fields, 411 Milton Road, said she lived in the closest house to Nursery Field. She described the problematic flooding occurrences at her residence. She expressed great concern for the potential flooding risks associated with this project. She suggested eventually there would need to be a bond in place to fund the purchase of the six houses adjacent to the park in the event the unpredictable area was flooded.

Allison Relyea, 12 Halstead Place, read an email she sent to the mayor in March of 2020. She felt concerned that the city's consultant was a member of the industry group Synthetic Turf Council (STC) which she felt was biased toward a turf preference. Ms. Relyea asked the Council to consider other alternatives, such as fundraising efforts for natural grass fields. She asked that the City engage non-biased consultants. She read the STC's mission and vision statements in support of synthetic turf.

Mr. Nardone clarified that STC was an industry organization that provided information and resources for anyone who was interested in more information on synthetic turf. The City had asked his team to present turf solutions including natural grass. He viewed STC as a resource for consultants like himself, and he was not a synthetic turf salesman. Mr. Usry confirmed for Councilwoman Johnson City staff made the choice of consultant firms, that Stantec was the consultant for other City projects, and that Mr. Nardone was chosen because he was familiar with the project as the original engineer in 2020.

Mark Hayes, 68 Elmwood Ave., a neighbor to Nursery Field, said there was an immense amount of flood risk at Nursery Field, and not just from Blind Brook. He said all the water on Elmwood flows down into the Nursery Field area, and he was disappointed that the analysis did not have much consideration for water entering the field from a higher elevation and washing into the artificial turf area. He was unconvinced that the placement of the field would reduce the amount of water that flows into the six houses on the west side of the field. He encouraged a holistic view and taking time to talk to unbiased experts. He was concerned about potential removal of trees. Councilwoman Souza replied that the plan before the Council and public did not include chopping down any trees or plants.

Dan Adler, 61 Elmwood Ave., raised the point that even though different options were presented before the Council, the plan was never going to be natural grass because the funding group only committed to synthetic. He shared a plan of Nursery Field that was submitted to the State in 2020. He maintained the original plan had language about cutting down trees, and he marked those trees with Xs. There was more discussion from the Council and Manager that there was no plan to remove trees, and the dissemination of a plan to remove trees caused confusion within the community. Mr. Adler recommended that grant funding should repair the field and fix the drainage. He referenced a consultant study in 2011, in which he described that Nursery Field would be an inappropriate place to install turf.

Councilwoman Johnson asked the City Manager to explain the City's significant efforts to obtain grants. Mr. Usry estimated 10-15 grants were pursued every year, from \$50K to millions, and in the last two and a half years have secured \$12M to \$15M of grant monies. There was a full-time grant consultant. The City was in the process of completing the consolidated funding application for the State of New York, and tracking the Environmental Bond Act. The SHPO (State Historic Preservation Office) process included verification there will be no disturbance of historically-important artifacts, and the original plan outlining the construction zone verified no such disturbances. The original plan should only be considered for its original purpose, not to delineate EFC boundaries, mark trees, or serve as a construction plan.

Meg Cameron, 5 Martin Butler Court, thought the consultant's presentation was balanced with pros and cons. She felt better about the potential benefits of turf, giving the kids more play time away from screens. She felt that the consultant had addressed flooding questions. She further said that not all of the 400 people who signed the petition had heard the presentation, or that it was really considered by those who opposed the plan. Her biggest objection was putting more non-degradable plastic in the environment. She encouraged everyone to listen.

Paul Benowitz, 29 Ellsworth Street, noted his historical experience on the Flood Committee. Elmwood coming off of Rye Beach Ave was a lot higher than the field at Nursery Park and would contribute to water on the field. The water would not just come from the brook. He thought many neighbors of Nursery Park did not fully understand the scope of the project. The goal should be to retain the same amount of water pre-project as post-project, and that raising the field was essentially kicking the can down the road. Councilwoman Souza explained that nothing had been decided and there was still a need for concrete details, not theoretical, and no steps would be skipped. Councilwoman Johnson reiterated that funding group would fund a wetland study.

Tracy Stora, 3 Fairlawn Court, said she was a neighbor of Nursery Field and had heavily researched the matter. She said she was chair of the CCAC which advised the Planning Commission on wetland permits, and she had processed 130 wetland permits in 10 years. She disagreed with putting artificial turf on a floodplain with a wetland. She was concerned that the project would impact the area view scape and wildlife will lose habitat. She was concerned about stormwater quality and runoff into the Blind Brook, and hoped the consultants were fully considering the environment. She hoped the Council would consider alternative places to put an artificial turf field, and instead rehabilitate the natural grass at Nursery Field.

Councilman Henderson said the City was in the process of cooperating with communities upstream to help with flood mitigation, and putting in an artificial turf field appeared to be in contradiction with those efforts. Mayor Cohn replied that Purchase College, Manhattanville, Port Chester, Rye Brook had synthetic fields along Blind Brook. Councilwoman Souza maintained the newest iteration of the plan presented a net positive for flooding because it added water retention systems to the field.

Sue Drouin read more of Laura Brett's letter. It said that if the City approved a turf field in such a sensitive location it will impact the message to residents about the value it places on protecting wetlands. Such an action could make it harder for the Planning Commission to request applicants for wetland permits to modify applications to protect wetlands. City action to build a turf field in a wetland buffer could be used in future litigation with the City over wetland permits. Neighbors impacted by flooding after the project may blame their problems on the City whether or not the flooding was due to the new turf field. Ms. Drouin concluded that now was a good time to bring together all parties to collaborate on a mutually beneficial solution.

Jerry Seitz, 141 Kirby Lane, introduced himself as a Rye resident for over 50 years, and previous member of City committees and Council. He suggested the councilmembers had a great deal of homework to do. He supported Councilman Henderson's statements, and the assertion that the current proposal was a violation of law.

No action was required at the Council meeting. Mayor Cohn closed the agenda item.

9. Continue the public hearing to amend Chapter 187 “Trees” of the Rye City Code.
- a) Resolution to adopt a new local law Chapter 187, “Trees” of the Rye City Code and to adopt a SEQR Negative Declaration in connection with amendments to Chapter 187.

Councilwoman Souza thanked the City staff, City arborist, Nick Everett, and Tracy Stora for their teamwork on the tree code changes. The current iteration was reflective of what the community wanted. Mayor Cohn suggested marking the agenda after 14 months of tree law passage and review its effectiveness. Councilman Stacks agreed about the importance of future review and noted the leaf blower law was treated the same way.

Mayor Cohn opened the continued public hearing to amend Chapter 187 of the Rye City Code.

Katherine Briggs, 1 Walnut St., thanked the Council for their time and effort on the tree law. She appreciated the more relaxed view on only planting native trees. As a business owner she felt the tree law was an invasion of homeowners’ rights, especially after passing the leaf blower law. For some residents it was a financial burden to take down one tree and plant new ones.

Judy Studebaker, 8 Ann Lane, suggested the new law should begin with a statement about the necessary protection of trees to reduce climate change. She also said that the arborist should be the one to evaluate the trees, not the busy Building Department. Councilwoman Souza read the first paragraph of the new law which reflected the importance of protecting trees. Ms. Studebaker said that when Ms. Studebaker last came to a Council meeting she warned about invasive vines climbing and killing trees in Rye. She noted the exact situation was happening right behind Citibank, but the bank told her it was a City problem. She encouraged homeowners to cut vines at the base and pull them down to stop their growth.

Tracy Stora, 3 Fairlawn Court, served on the Tree Committee, and she commended Councilwoman Johnson for her substantial efforts. She thought the tree code was in a much better place than when it was first discussed in 2012. Though the new tree law was not perfect, she was hopeful the tree law would move forward.

Paul Knudsvig, 2 Onondaga St., thought the genesis of the new code was to get at what people call clear-cutting. Though not a lawyer, he said he had a lot of experience with contract law. He assumed the City code was a contract with the community at large. He pondered if the code really did anything, as it was permeated with ‘may’ and ‘might,’ and vacant of ‘is’ or ‘will.’ He said that decisions appeared to be at the whim of the Planning Commission, and he referred to the code as a wish list. He felt the fees were too low, and felt that as such, the code lacked deterrence to clear-cutting.

Councilwoman Johnson asked Corporation Counsel Wilson to explain the fee structure. Ms. Wilson stated if a party was found to be in violation of the code and issued a violation, then

the matter goes before Rye City Court where it will be settled or tried with an imposed fine. The fines were the maximum limits under State law. Councilwoman Johnson explained there will be no certificate of occupancy, and larger issues for developers. Ms. Wilson said depending on the nature of the violation judges could impose monetary penalties, or other types of relief such as withholding permits or mandatory litigation.

Lisa Chen, 296 Milton Road, thanked the Council for their efforts thus far. She pled with the Council to move the law forward by voting on it at the meeting. She was confident the appropriate research and consulting had gone into writing the law, fully vetted by City staff, legal counsel, arborists, and other professional constituents. No ordinance was perfect, but there was not much to gain by continuing to debate and delay, but there was a lot to lose as mature trees continued to be cut down without thought or oversight. The code could be thoroughly reviewed after considering a year of data.

James Ward, 50 Reymont Ave., thought the ordinance was a step in the right direction, but it was a little difficult to read. He asked whether the permitting processes were trying to preserve trees or if cutting mature trees would be approved without specific consideration if it was within the property owner's rights. Saving trees was great, but it would also be great to cut down on applications. He thought the tree foreperson needed a title with more gravitas, like tree manager. Councilwoman Souza said the title was given for legal purposes but could be colloquially called something different.

Councilman Nathan thought people might be getting stuck on 187-7(a) 2 that said if a tree was neither dead nor deemed an imminent risk the building inspector may approve three or four trees depending on the side of the property, so the building inspector has discretion, and there was no automatic right to remove trees. Ms. Wilson explained that that the building inspector had to visit the site and confirm the property owner meets the limitations for as-of right to remove trees, and consult with an arborist if necessary. Councilman Nathan's understanding was that if the inspector decided the tree was healthy and no trees were previously removed, they must approve the permit. He suggested the verbiage should be 'may' instead of 'shall.'

Daniel Greto, Rye resident, said he reviewed the most recent updates and addressed several items that were also covered in a letter he sent to the Council. As the law was written, for the building inspector to address a tree in an emergency situation, the inspector may establish an expedited permit process, and Mr. Greto thought 'shall' should replace 'may.' There was no timetable for the permit process in the new law, but other municipalities did include timetables in their tree laws. The proposal did not protect neighbor trees that might suffer root damage during a construction project or tree removal. The mayor agreed setback legislation might be warranted in the future as the enforcement of this law unfolds, but it should not hold up the current legislation. Mr. Greto shared that 'tree warden' was the property terminology.

Councilman Nathan asked how the City would handle the scenario of arborists in disagreement. Mr. Miller explained that if an arborist determined the tree should not be cut down, the building inspector would deny the permit, and if an applicant wanted to appeal it would go before the Planning Commission. The opinions of arborists retained by homeowners would be presented to the Planning Commission which would take both arborists' opinions in consideration.

Councilman Nathan asked about the liability in a health and safety situation. Ms. Wilson replied that if the Planning Commission decided the tree would not be cut down and it fell on its own, the circumstances would be considered based on reasonable safety risk. The process did not negate potential liability. Councilwoman Johnson said there were specific standards, definitions, and ways of assessing the viability of trees, and the Planning Commission relied on the expertise of the arborist.

Councilman Nathan asked City Manager Usry about the administrative costs of managing the tree ordinance. City Manager Usry expected to the City would engage the arborist for the remainder of 2023 at a cost of \$25,000, assuming he spends eight hours a week doing site consultancy, plan review, tree plantings, and fielding questions from the Planning Commission. Mr. Usry assumed that by the time the Council began budget planning for 2024 there would be a better handle on the implication of the tree law and if the City would need another FTE or consultancy expense. With budget planning only two months away, Mr. Miller thought there might need to be budget amendments after more experience with the law.

Councilwoman Souza made the motion, seconded by Councilwoman Johnson, to close the public hearing. The Council unanimously agreed.

The Council reviewed the approved non-substantive changes to be made to the draft law.

Mr. Seitz returned to the podium to insist that changing ‘may’ to ‘shall’ constituted substantive changes and the public should be allowed time to consider the amended law. Councilman Nathan thought the Council was moving in the right direction, but very quickly. He said he did not see harm in releasing an amended version because it impacted every single property owner in Rye, and they still had questions and concerns.

Councilman Stacks made a motion, seconded by Councilman Nathan, to reopen the public hearing. The Council unanimously agreed.

Elaine DiCostanzo, 393 Rye Beach Ave, agreed that the law was moving quickly and felt there was still much confusion about implementation and its bureaucratic mechanisms. She said the clear-cutting issue was emergent, but she did not understand the emergent passing of a tree law that will affect every citizen in Rye without distinct clarity on how it would unfold. She disagreed with passing a near-perfect law and fixing it later. She said her legal experience made her question the purpose of enfolding every Rye citizen in heightened fees, bureaucracy, and liability.

Councilwoman Johnson explained to Councilman Nathan that every lot was configured differently but still had to be considered under one parameter, and the easiest parameter for the Building Department to administer the law is the quantity of trees.

Mr. Seitz returned to the podium and stated they were back to the same issue, which was preparing to go forward with a law not fully disclosed to the community. He reiterated the new draft should be shared with the public before passing the law. There was general discussion among the Council regarding the iterations of the law that were all shared publicly.

Councilwoman Souza made the motion, seconded by Councilwoman Johnson, to re-close the public hearing. The Council unanimously agreed.

Councilwoman Souza made a motion, seconded by Councilman Stacks, to adopt the resolution and local law, below. Before the vote, there was discussion among the councilmembers:

Councilman Nathan stated the community should be able to see the revised draft and the Council could vote on June 14th after there was a chance to obtain feedback. Councilman Stacks replied there had been weeks of feedback, and Councilwoman Johnson said it had been four months. Councilman Nathan said a year had been spent on leaf blowers, and Councilwoman Souza mentioned she received no feedback from the councilman during the process.

Several councilmembers wished to proceed with roll call, and several councilmembers wished to continue discussion.

Councilman Henderson thanked the tree subgroup and the City staff for their work on the law, and he acknowledged the community for their passionate tree protection. He said he will vote against the current draft because he has not seen evidence that Rye was losing trees at a rate so alarming as to justify the truly radical step of regulating every private property in Rye. The law went far beyond the understandable banning of “clear-cutting” for residential development. Councilman Henderson believed property owners in Rye can generally make better decisions about how they maintain their property than a Rye building inspector or tree manager. He was concerned about the added cost to homeowners and the City. The true cost-benefit was unknown. The law should not extend to non-residential property like non-profits and clubs that would likely suffer. He was concerned about administration, liability, and the difficulty in removing trees that needed to be removed. He was concerned about the enforcement of the law and diversion of limited City and police resources, and neighbors telling on neighbors was not good for the community.

Councilwoman Fontanes thanked the tree subcommittee and her colleagues on the Council that contributed in different ways to the draft of the tree law. She said she will vote yes, but warned that trees will still come down. She said that analysis has shown that despite the sweeping nature of the law, there are major loopholes, and aspects the City had no control over. A priority for Rye was the replacement of trees, and there was no robust plan for it. She suggested the passing of the tree law should initiate a serious effort to replace trees. Councilwoman Fontanes was worried about the hefty fines for citizens who may not fully understand they were doing anything wrong.

Councilman Nathan thought the Council had moved in the right direction and the tree subcommittee had done a very good job of balancing everything. He was satisfied about amending the draft to include ‘shall’ where appropriate. He will support the law and reiterated how critical it will be to revisit the law after 14 months of experience.

(The motion made above by Councilwoman Souza, seconded by Councilman Stacks, was as follows, to adopt the following resolution and local law):

**RESOLUTION**

**Adopting a Local Law to Amend Chapter 187 “Trees”, of the Code of the City of Rye and to adopt a SEQR Negative Declaration in connection with amendments to Chapter 187.**

**WHEREAS**, on March 15, 2023, the City Council presented an initial working draft of an amendment in its entirety of Chapter 187 “Trees” of the Rye City Code; and

**WHEREAS**, the City Council subsequently set a public hearing for April 26, 2023, to adopt a local law to amend Chapter 187 “Trees” to the Code of the City of Rye; and

**WHEREAS**, notice of the hearing was published and circulated as required by law; and

**WHEREAS**, the City Council conducted a noticed public hearing on the draft local law on April 26, 2023, in which it gave all those wishing to be heard the opportunity to be heard; and

**WHEREAS**, the City Council continued the public hearing on an amended draft local law on May 24, 2023, in which it gave all those wishing to be heard the opportunity to be heard; and

**WHEREAS**, a draft local law and Environmental Assessment Form with attachment was presented to the City Council; and

**WHEREAS**, the City Council has reviewed the Environmental Assessment Form (EAF) and determines that the proposed action is consider an Unlisted Action; and

**WHEREAS**, the City Council is the only Involved Agency in connection with the proposed action;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council based on its review of the Environmental Assessment Form (EAF), the criteria listed in Section 617.7(c) of SEQRA and the complete record, the City Council finds that the proposed action will not have a significant adverse environmental impact and issues a Negative Declaration; and

**BE IT FURTHER RESOLVED**, that the City Council adopts Local Law 07 -2023 to amend in its entirety Chapter 187 “Trees” to the Code of the City of Rye.

**LOCAL LAW  
CITY OF RYE NO. 07 2023**

**A Local law to amend in its Entirety Chapter 187 “Trees”, of the  
Code of the City of Rye, New York**

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



**Section 1.** Chapter 187, “Trees”, of the Code of the City of Rye is hereby repealed in its entirety and replaced with the following:

**CHAPTER 187 TREES**

**ARTICLE I**

**Findings, Purpose and Definitions**

**§ 187-1 Findings and purpose.**

The preservation and maintenance of trees and wooded lands is necessary to protect the health, safety and general welfare of the City of Rye because trees and their canopy provide shade, impede soil erosion, aid water absorption, reduce storm water runoff, enhance air quality, mitigate global climate change, yield advantageous microclimate effects, offer a natural barrier to noise, provide a natural habitat for wildlife and add to the aesthetic quality of the community. The purpose of this chapter is to encourage the preservation and planting of healthy native trees, enhance the tree canopy throughout Rye and to encourage the proper planning for the maintenance, restoration and protection of City trees.

**§ 187-2 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

ANSI A300 Standards – The standards with respect to the care and treatment of trees developed by the American National Standards Institute and designated as ANSI A300.

CALIPER – The trunk diameter measured six inches above the ground for up to and including four-inch caliper size and 12 inches above the ground for larger sized trunks.

CITY - City of Rye, New York.

CERTIFIED ARBORIST - A professional holding certification regulated and maintained with the International Society of Arboriculture (ISA).

CITY PROPERTY –Parcels owned by the City of Rye, which includes rights-of-way (ROW), parks, open space and City facilities.

DBH - The diameter of a tree measured at a point of fifty-four (54) inches above ground level at the base of the tree on the uphill side.

PUBLIC PROPERTY - Shall be any property or right-of-way owned by any municipal corporation or public school district that is not defined as City Property

**PUBLIC RIGHT-OF-WAY** – The surface and space above, on, and below any public highway, avenue, street, lane, alley, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the City now or hereafter holds any property interest.

**TREE** - A living deciduous or coniferous plant with an erect perennial trunk and a definitely formed crown of foliage.

**TREE, PROTECTED** - Any tree that has a DBH of eight (8) inches or greater.

**TREE, SIGNIFICANT** - Any tree that has a DBH of thirty (30) inches or greater.

**TREE FOREPERSON** - The labor foreperson in charge of trees or such representative, such as an experienced certified arborist, designated by the City Engineer.

## **ARTICLE II**

### **Trees on City and Public Property**

#### **§ 187-3 Planting of trees on City property.**

No person shall plant any tree, shrub or other vegetation within the limits of any public street, right-of-way, park or other public place without first obtaining a permit from the Department of Public Works and complying with the following requirements. Such a permit shall be granted only upon the determination by the Tree Foreperson, after consulting with the Police Department, that such a planting will not create a traffic hazard and will not interfere with the use of such street, right-of-way, park or other public place by the public and that such planting will enhance the beauty and appearance of the street, right-of-way, park or other public place and the surrounding area.

- A. Trees planted within the limits of any City street, right-of-way, park or other public place shall be of a species and quality approved by the Tree Foreperson and shall be planted at least 30 feet apart unless otherwise authorized by the Tree Foreperson. Each deciduous tree shall measure not less than 2.0 inches nursery caliper nor less than eight (8) to ten (10) feet in height, if a conifer.
- B. Should any tree, shrub or plant planted within the limits of any City street, right-of-way, park or other public place pursuant to any such permit, in the opinion of the Tree Foreperson, at any time constitute a traffic hazard, interfere with the use of such street, right-of-way, park or other public place by the public or detract from the beauty and appearance of the street, right-of-way, park or other public place or the surrounding area, such tree, shrub or plant will be removed.

#### **§ 187-4 Protection to public trees.**

- A. Unless approved by the Tree Foreperson, no person, including a person employed by or acting on behalf of a public utility or the City of Rye, may:

- (1) Remove a tree on City property;
  - (2) Fasten or tie any animal to or attach any sign, bill, card, notice or advertisement to any tree or shrub in any City street, right-of-way, park or public place or allow any animal under his control to injure any such tree or shrub;
  - (3) Injure or destroy any tree on City property; pruning shall be done pursuant to ANSI standards and topping will not be permitted.
  - (4) Pass any public service utility wire through the branches of a tree on City property without sufficient insulation to prevent damage to the tree;
  - (5) Attach a guy wire to a tree on City property in such a manner as to girdle or restrict the growth of the tree. Where it is necessary to attach any guy wires or cables, such devices shall be attached by means of lag hooks screwed into the trunks or by eyebolts passing through the trunk; or
  - (6) Climb a tree on City property with the aid of spurs, unless the trees is being climbed for removal.
- B. No person, including any person or entity engaged by any person to treat any tree on public property, may treat a tree on public property without the permission of the Tree Foreperson.
- C. Any person who removes a tree on City property or causes a tree on City property to be removed, must, within three (3) months or as soon as possible after doing so, remove the stump and all debris from the disturbed area, backfill all holes and leave the area graded and covered in a manner acceptable to the Tree Foreperson.
- D. No person shall prune, spray, treat cavities, fertilize, cable, brace or otherwise treat or cause to be treated City trees without first receiving approval by the Tree Foreperson. No City employee shall treat City trees without first consulting the Tree Foreperson
- E. Trees on Public Property as defined herein are not subject to the requirements of this Chapter. Trees on City Property as defined herein shall not be subject to the requirements of Article III, *Trees on Private Property*, of this Chapter.
- F. When it is necessary to remove limbs to make clear passage for wires and where the removal of such limbs might injure a tree or spoil its symmetry or otherwise mar its appearance, it shall be necessary to obtain a permit from the Tree Foreperson before starting such work. It shall not be necessary to secure a permit for the usual periodical removal of small branches to allow the free passage of wires, but any such work will be subject to inspection by the Tree Foreperson, and where such work is not up to ANSI A300, Part 1 standard, any expense incurred by the City in repairing the same will be charged to the public utility responsible.

**ARTICLE III**  
**Trees on Private Property**

**§ 187-5 Prohibited trees.**

Property owners and other persons are prohibited from planting the following invasive tree species: Sycamore Maple (*Acer pseudoplatanus*), Amur Cork Tree (*Phellodendron amurense*), Gray Florist's Willow (*Salix atrocinerea*), Norway Maple (*Acer platanoides*), Black Locust (*Robinia pseudoacacia*).

**§ 187-6 Removal of trees as part of Subdivision.**

Any property owner applying for subdivision approval whose plans would require the removal of any trees is subject to the tree preservation regulations outlined in Chapter 170, *Subdivision of Land*, of the Code of the City of Rye.

**§ 187-7 Permit required and approving authority**

- A. Permit Required. The removal of any Protected Tree or Significant Tree shall require the submission of a tree removal permit from the City Building Inspector. Permit and application requirements as set forth by the Building Inspector shall be submitted prior to the commencement of any tree removal. An application fee and inspection fee in amounts set forth in a fee schedule established from time to time by the City Council shall be submitted with the application. The Building Inspector may consult with a Certified Arborist, Tree Foreperson or other City Official as authorized by the City Manager to confirm tree health and condition prior to the issuance of a permit. Appeals of the Building Inspector's determination or permit conditions can be appealed to the City Planning Commission. Permits shall be issued as follows:
- (1) Dead, Diseased or Dangerous Trees. The Building Department shall approve the removal of any Protected or Significant Tree deemed dead, diseased or deemed an imminent risk pursuant to the standards and criteria of ANSI A300, Part 9 as confirmed, if necessary, by the City's arborist. The Building Department shall establish expedited permitting procedures for tree removal required due to imminent risk or other similar emergency.
  - (2) Limited Tree Removal. If a tree is deemed neither dead nor deemed an imminent risk, the Building Inspector shall approve within any 12-month period on a property the removal of any Protected or Significant Tree subject to the limitations in the table below. Any tree removal exceeding the maximum permitted tree removal limitations in the table below shall be subject to the Planning Commission review and restoration requirements of §187-8.

**Tree Removal Allowed by the Building Inspector in a 12-Month Period**

<b>Private Property Lot Size</b>	<b>Permitted Tree Removal by Building Inspector</b>
Less than 10,000 square feet	Up to 3 Protected Trees, not more than which can be a Significant Tree
10,001 square feet to 20,000 square feet	Up to 4 Protected Trees, not more than which can be a Significant Tree
20,001 square feet to 2 acres	Up to 6 Protected Trees, not more than which can be a Significant Tree
Greater than 2 acres to 10 acres	Up to 13 Protected Trees, not more than of which can be a Significant Tree
More than 10 acres	Up to 36 Protected Trees, not more than of which can be a Significant Tree

- B. Storm Damage Exemption. As a result of a severe weather event involving significant damage to trees, the City Manager may temporarily suspend the requirement of this Chapter.

#### **§ 187-8 Planning Commission review and appeals**

- A. Application Requirements. Applications seeking to appeal a Building Inspector determination or an application for tree removal subject to Planning Commission review pursuant to §187-7 or §187-8, shall provide the application forms, information and plans as established by the Planning Commission and submitted pursuant to their meeting deadline requirements. An application fee and inspection fee in amounts set forth in a fee schedule established from time to time by the City Council shall be submitted with the application.
- B. Procedure. The Planning Commission shall review tree removal permit applications to it and appeals from Building Inspector determinations at their regularly scheduled meetings. Such meetings shall adhere to notice, minute and decision-making requirements as provided for by law. No tree removal shall commence until a written permit has been issued by the Planning Commission.
- C. Tree Removal Involving Land Development. Applications involving tree removal pursuant to § 187-7 that is associated with land development or land disturbing activities must be reviewed and approved by the Planning Commission. All development activities including but not limited to all proposed structures such as buildings, pools, walls, impervious areas, grading, utility connections and stormwater drainage measures shall be shown on a plan submitted by the applicant and its relationship and potential impact to existing regulated trees. The size, type, health and condition of all regulated trees as determined by Certified Arborist shall be shown on the plan as well as all tree preservation and tree protection measures.
- D. Permit Condition and Decision Criteria. As part of any tree permit application to it, the Planning Commission is authorized to implement conditions or require measures to protect trees from development or construction activities. In considering tree removal applications

or Building Inspector appeals, the Planning Commission shall authorize tree removal consistent with the decision criteria (individually or in the aggregate) listed below. If such criteria have not been satisfied the application may be denied by the Planning Commission.

- (1) The tree to be removed is dead, diseased, dangerous or invasive.
  - (2) The tree to be removed substantially interferes with the permitted use of the property and that such construction or use of the property cannot be reasonably modified or altered to accommodate the preservation of the tree.
  - (3) The tree removal will promote the growth or health of existing or proposed vegetation, remedy a public safety concern or is otherwise necessary because of extenuating circumstances.
  - (4) The number of trees to be removed is the minimum necessary to meet the reasonable needs of the applicant.
- E. The Planning Commission in its review of any application may seek the assistance of an experienced Certified Arborist and the advisory opinion of the Conservation Commission Advisory Council. The Commission may also require the applicant to place in escrow with the City a fee sufficient to reimburse the City for the cost of professional consultation fees and other expenditures attributable to the proposal. The Planning Commission may establish an escrow account funded by the applicant prior to the Commission authorizing the performance of consulting services regarding the proposal.

## **§ 187-9 Restoration**

- A. Tree Replacement Schedule. All applicants for permits involving the removal of trees as part of a Planning Commission permit shall be required to replant trees on the property based on the following schedule:

<b>DBH of Tree Removed (inches)</b>	<b>Number of Trees To Be Replanted</b>
8 to 12	1 for every two trees removed
13 to 24	1 for every tree removed
25 to 39	2 for every tree removed
40 to 49	3 for every tree removed
50 to 59	4 for every tree removed
60 or greater	5 for every tree removed

- B. Tree Replanting Guidelines. As part of a restoration plan the Planning Commission shall adhere to the following tree replanting guidelines, which it may modify at its discretion based on specific site condition or other circumstances.

- (1) Replanted trees shall have a minimum caliper of 2.0 inches or greater or 8-10 feet tall if a conifer tree. The number and size of replanted trees can be varied by the Planning

Commission due specific site conditions or potential circumstances such as minimizing potential erosion impacts.

- (2) Native hardwood deciduous trees shall be preferred over non-native or ornamental trees or shrubs.
- (3) A diversity of tree species, both deciduous and coniferous, in a tree replanting program shall be encouraged to the maximum extent possible.
- (4) Where possible, tree replanting should be located in front yards, particularly where large mature trees have been removed in a front yard.
- (5) On-site tree replacement is preferred over off-site such as an adjacent right-of-way. Any tree planting on City Property requires approval of the Tree Foreperson prior to planting regardless of whether it is part of a Planning Commission's approved restoration plan.

- C. Tree Replanting Conditions. The Planning Commission is authorized to establish reasonable conditions related to replanting requirements including, but not limited to required City inspections, time frames to complete required replanting and other provisions to ensure the preservation and survivability of required replanted trees (including continued protective provisions). The Planning Commission shall follow ANSI standards adjusted for local conditions.
- D. In the event that conditions on a lot make the planting of required replacement trees not feasible, the Planning Commission may order the applicant to pay a sum of money to the City's Tree Fund in an amount established by the City Council in its annual fees and charges schedule.

#### **§ 187-10 Removal of branches overhanging highways.**

Where privately owned trees encroach upon any street, right-of-way, park or other public place, the Tree Foreperson is authorized to remove branches overhanging any public street, right-of-way, park or other public place, or if, in his or her judgment, such trees are dangerous to the public, he or she is authorized to remove them.

#### **§ 187-11 Removal of dead trees.**

Where any dead tree or trees located on private property adjacent to a public street, right-of-way, park or other public place constitute a danger or are potentially dangerous to the traveling public, the Tree Foreperson may serve personally or by mail upon the owner of said property a written notice to remove the dead tree or trees, and upon failure to do so within 20 days after the service of said notice, the City, through its contractors, agents or employees, may remove the same and assess the cost thereof against the property affected by said assessment, to be levied, collected and enforced in the same manner as taxes upon said property for City purposes are levied, collected and enforced.

**ARTICLE IV**  
**Penalties for Offenses**

**§ 187-12 Penalties for offenses.**

- A. Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a violation and, upon conviction, may be subject to fines, including:
  - (1) Violations affecting a Protected Tree: up to \$1,000 per violation;
  - (2) Violations affecting a Significant Tree: up to \$1,000 per violation;
  - (3) Other violations of this chapter: up to \$1,000 per violation;
  - (4) Fines are cumulative;
  - (5) Each tree removed in violation of this Chapter shall be deemed a separate violation;
  - (6) Both the property owner and the tree removal contractor may be held in violation and fined separately.
- B. A restoration agreement may be required in addition to any fines associated with the violation.
  - (1) The restoration agreement may mandate planting one or more replacement trees on the property that are of like quality and size to those removed in violation of this Chapter. If like-sized replacement is not practical, replacement with a specific quantity of smaller-sized trees may be required.
  - (2) Restoration planting shall be completed within six months of the execution of the restoration agreement. If seasonal planting requirements prevent the timely completion of restoration, the time line may be extended by the Building Inspector.
  - (3) No certificate of occupancy shall be issued by the Building Inspector until the restoration work is completed to the reasonable satisfaction of the Building Inspector. If circumstances prevent the restoration plan from being completed, the Building Inspector may permit the owner to post a bond or cash equivalent sufficient to cover the cost of the restoration planting. The bond or cash equivalent will be returned to applicant upon the satisfactory completion of work inspection to the satisfaction of the Building Inspector.
- C. In addition to the foregoing, any person, firm or corporation engaged in the business of tree removal or care who or which shall aid, assist or abet in the violation of this Chapter may be denied a permit under 187-7 for up to two years to ensure future compliance.
- D. The City shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this Chapter and to compel the replacement of any or all trees



removed illegally, and the restoration of the land affected to its condition prior to the provisions of this chapter.

- E. The City shall not issue a building permit or Certificate of Occupancy for any property for which a violation of this chapter has been served, or for which an administrative or judicial proceeding has been commenced under this section, for 18 months after said violation or proceeding is dismissed or resolved.

## **ARTICLE V Enforcement**

### **§ 187-13 Enforcement.**

The City Engineer or the Building Inspector or their designee shall enforce this chapter.

#### **Section 2.     Severability**

The invalidity of any word, section, clause, paragraph, sentence, part, or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

#### **Section 3.     Effective Date**

This local law shall take effect immediately upon filing with the Secretary of State.

#### **ROLL CALL**

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

- b) Resolution to adopt the new fees associated with Chapter 187 “Trees” of the Rye City Code.

Mr. Usry said he provided a memo to the Council to amend the resolution to include authorization to engage an arborist at the cost of \$25K from Contingency. He clarified for Councilwoman Fontanes that the fee was per tree removal event, not per tree.

Councilwoman Souza made the motion, seconded by Councilman Stacks, to adopt the following resolution:

### **RESOLUTION**

**WHEREAS**, on May 24, 2023, the City Council adopted amendments to Chapter 187 “Trees” of the Rye City Code; and

**WHEREAS**, the new permitting process for certain tree removal activity will require additional administrative time to review and process, in addition to staff and other professional consultant costs; and

**WHEREAS**, because there are new and/or additional types of applications to be processed, the City Council finds it reasonable to adopt a revised fee schedule to correlate to the new types of permits.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby adopts the following fee schedule for the remaining months of 2023:

- A) Tree Permit Fee - \$50** This fee will cover the required filing of any tree removal permit for a Protected Tree or Significant Tree.
- B) Planning Commission Tree Review Fee - \$500** This fee will cover any tree removal application which goes before the Planning Commission (independent of other fees related to site plan, wetland permits etc.).
- C) Fee in Lieu of Restoration - \$300/tree** For situations where replanting is not feasible, there is a required contribution to the City's Tree Fund;

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the City Manager is authorized to engage a consulting arborist and transfer \$25,000 from the City's Contingency Fund to provide for those services.

**ROLL CALL**

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

10. Open a public hearing to adopt a new local law to amend Chapter 191 "Vehicles and Traffic" by repealing section 191-38.1. "Resident meter parking permit zone" within Article VII "Off-Street Metered Parking" to eliminate resident-only metered parking zones.

Mr. Usry explained that the City was eliminating permitted parking 10-12 spaces on Theodore Fremd and turning them into hourly parking.

Councilman Stacks made the motion, seconded by Councilwoman Souza, to open the public hearing. The Council unanimously agreed.

No members of the public wished to speak.

Councilman Stacks made the motion to close the public hearing, seconded by Councilwoman Souza, to close the public hearing. The Council unanimously agreed.

Councilman Souza made the motion, seconded by Councilwoman Johnson, to adopt a local law repealing section 191-38.1 of the Rye City Code, as follows:

**CITY OF RYE  
LOCAL LAW NO. 08     2023**

A local law amending Chapter 191 of the Rye City Code by REPEALING  
Sub-Section 191-38.1

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

Section 1. Chapter 191 of the Rye City Code is hereby amended as follows: Sub-Section 191-38.1 is REPEALED in its entirety.

Section 2. This local law shall take effect immediately on filing in the office of the Secretary of State.

**ROLL CALL**

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

11. Members of the public may be heard on matters for Council consideration that do not appear on the agenda.

There were no members of the public who wished to be heard.

12. Resolution to declare Juneteenth a holiday in the City of Rye.

Councilwoman Souza made a motion, seconded by Councilwoman Fontanes, to adopt the following resolution:

**RESOLUTION**

**Designating June 19, 2023, as “Juneteenth Independence Day” in recognition of June 19, 1865, the date on which news of the end of slavery reached the slaves in the Southwestern States.**

**WHEREAS**, news of the end of slavery did not reach the frontier areas of the United States, in particular the State of Texas and the other Southwestern States, until months after the conclusion of the Civil War, more than 2½ years after President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863; and

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**WHEREAS**, on June 19, 1865, Union soldiers, led by Major General Gordon Granger, arrived in Galveston, Texas, with news that the Civil War had ended and the enslaved were free; and

**WHEREAS**, African Americans who had been slaves in the Southwest celebrated June 19, commonly known as “Juneteenth Independence Day”, as inspiration and encouragement for future generations; and

**WHEREAS**, African Americans from the Southwest have continued the tradition of observing Juneteenth Independence Day for more than 150 years; and

**WHEREAS**, Juneteenth Independence Day began as a holiday in the State of Texas and is now celebrated in all 50 States and the District of Columbia as a special day of observance in recognition of the emancipation of all slaves in the United States; and

**WHEREAS**, Juneteenth Independence Day celebrations have been held to honor African-American freedom while encouraging self-development and respect for all cultures; and

**WHEREAS**, the faith and strength of character demonstrated by former slaves and the descendants of former slaves remain an example for all people of the United States, regardless of background, religion, or race; and

**WHEREAS**, slavery was not officially abolished until the ratification of the 13th Amendment to the Constitution of the United States in December 1865; and

**WHEREAS**, over the course of its history, the United States has grown into a symbol of democracy and freedom around the world; and

**NOW THEREFORE BE IT RESOLVED**, the City of Rye designates June 19, 2023, as “Juneteenth Independence Day”; and

**NOW THEREFORE BE IT RESOLVED**, the City of Rye recognizes the historical significance of Juneteenth Independence Day to the United States; and

**BE IT FURTHER RESOLVED**, the City of Rye supports the continued nationwide celebration of Juneteenth Independence Day to provide an opportunity for the people of the United States to learn more about the past and to better understand the experiences that have shaped the United States; and

**BE IT FURTHER RESOLVED**, the City of Rye recognizes that the observance of the end of slavery is part of the history and heritage of the United States; and

**BE IT FURTHER RESOLVED**, the City of Rye will continue to recognize Juneteenth Independence Day annually.

**ROLL CALL**

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

13. Set a public hearing for June 14, 2023, to adopt a new local law amending Chapter 1- 12, “Definitions” under “General Provisions,” to add a definition for “holiday,” and create a uniform use of the word “holiday” throughout the City Code of the City of Rye by also amending “Telecommunications,” §185-4, and “Vehicles and Traffic” §191-38.1, §191-42, §191-46.

Councilwoman Johnson made a motion, seconded by Councilman Stacks and unanimously carried, to set a public hearing for June 14, 2023 to consider the adoption of a new local law amending Chapter 1- 12, “Definitions” under “General Provisions,” to add a definition for “holiday,” and create a uniform use of the word “holiday” throughout the City Code of the City of Rye by also amending “Telecommunications,” §185-4, and “Vehicles and Traffic” §191-38.1, §191-42, §191-46.

14. Consideration of a transfer of \$25,000 from the Rye Golf Club Contingency Fund to Whitby Castle Repairs and Maintenance account for a temporary air system at Whitby Castle until the new HVAC can be installed, and consideration to transfer \$75,000 from the Golf Club Funds Unrestricted Net Assets to cover the cost of replacing the 20-ton HVAC system with a new R410-A HVAC unit.

Mr. Usry explained that the HVAC system at Whitby Castle was failing, which was unfortunate timing with the upcoming wedding and event season. About the half the castle was not currently air conditioned. A rental system was secured for 3-4 weeks while the City waited for the new HVAC system. A complete assessment of Whitby Castle was underway to determine major mechanical replacement needs as part of a long-term plan.

Councilman Stacks made the motion, seconded by Councilwoman Souza, to adopt the following resolution:

**RESOLVED**, that the Council authorizes a transfer of \$25,000 from the RGC contingency fund to Whitby Castle Repairs and Maintenance account for a temporary air system at Whitby Castle until the new HVAC can be installed.

ROLL CALL

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

15. Old Business/New Business.

Corporation Counsel Wilson said that as she had previously briefed the City Council in executive session, the City negotiated with Save the Sound to enter into an amended stipulated order to be reviewed by the Department of Justice and the EPA and presented to the judge, which would amend the timeframe within which the City must take certain actions. The order is consistent with the prior stipulated order in that the term ended December 31, 2024.

Councilman Stacks made the motion, seconded by Councilwoman Souza, to authorize Corporation Counsel to enter into the amended stipulated order.

ROLL CALL

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

15. Adjournment.

Councilwoman Souza made the motion, seconded by Councilman Stacks, to adjourn the City Council meeting at 11:29 P.M. The Council unanimously agreed, and the meeting was adjourned.

Respectfully submitted,

Carolyn D'Andrea  
City Clerk



# CITY COUNCIL AGENDA

DEPT.: Fire Department

DATE: June 5, 2023

CONTACT: Michael A. Kopy, Commissioner of Public Safety

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

- Policy 906 – Public Employee Safety and Health Bureau Inspections
- Policy 907 – Division of Safety and Health Notification of Illness, Injury or Death
- Policy 1010 – Driver License Requirements
- Policy 1011 – Reporting for Duty
- Policy 1029 – Uniform Regulations
- Policy 1030 – Badges
- Policy 1031 – Identification Cards

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** Approval of the listed policies.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

Enhancement of the operational effectiveness of the Department.

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

See attached memo and new policies.

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



CITY OF RYE

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# Department of Public Safety

## Memorandum

To: Greg Usry, City Manager  
From: Michael A. Kopy, Public Safety Commissioner  
Date: 06/14/2023  
Re: Fire Department – Lexipol Policy

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

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

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

### Policy 906 - PESH

This policy establishes guidelines and responsibilities for Rye Fire Department members to follow in the event that a New York State Public Employee Safety and Health Bureau (PESH) inspector requests access to department property or work operations.

### Policy 907 - DOSH

The purpose of this policy is to provide guidelines for the Department to notify the New York State Department of Labor's Division of Safety and Health (DOSH) of employment related illnesses, injuries or deaths of any department members.





### **Policy 1010 – Driver License Requirements**

The purpose of this policy is to establish procedures to ensure that all Rye Fire Department members who drive as part of their duties have and maintain required driving licenses.

### **Policy 1011 – Reporting for Duty**

This policy describes the department's expectations of its employees when reporting for duty, to ensure that all members are fully capable of functioning in their capacity.

### **Policy 1029 – Uniform Regulations**

The purpose of this policy is to establish uniform regulations for members in order to enhance the department's overall professional and positive image.

### **Policy 1030 – Badges**

The name of the Rye Fire Department and the Department badge and uniform patches are property of the Department. This policy establishes the rules associated with Rye Fire Department badges and any likeness of the badge.

### **Policy 1031 – Identification Cards**

The purpose of this policy is to establish the guidelines for issuing and possessing Rye Fire Department identification cards. Any image or likeness of the identification card and the name of the Rye Fire Department are the property of the Department and their use shall be restricted as specified in this policy.



# Public Employee Safety and Health Bureau Inspections

## 906.1 PURPOSE AND SCOPE

This policy establishes guidelines and responsibilities for Rye Fire Department members to follow in the event that a New York State Public Employee Safety and Health Bureau (PESH) inspector requests access to department property or work operations (Labor Law § 27-a).

This policy does not address those inspections requested by the Rye Fire Department as part of a consultation service by PESH.

## 906.2 POLICY

It is the policy of the Rye Fire Department for the Career Captain or the authorized designee to designate one or more department representatives who will be responsible for facilitating a PESH inspection. Designated representatives shall make every reasonable effort to promptly meet with the PESH inspector once he/she has arrived.

Department members should work cooperatively with any PESH inspector to provide access to all necessary areas, equipment and records to facilitate a cohesive inspection process. Failure on the part of the Department to begin the inspection in a timely manner could result in the PESH inspector obtaining an inspection warrant to enter department property. This could unnecessarily create an adversarial relationship and should be avoided if at all possible. Prior to the beginning of the inspection, the Career Captain or Department representative shall contact Corporation Counsel for further guidance. Corporation Counsel should request to have a representative from their office personally participate in the inspection.

## 906.3 PROCEDURE

The PESH inspections may be unannounced. Typically inspections occur when there has been a serious accident, serious injury or occupational fatality; when a member has charged that a serious safety violation exists; or at a work site where an imminent danger has been identified.

Upon entering the department work site, the inspector will present his/her identification and will ask to meet with the department representative. There will usually be an initial meeting during which the inspector will:

- Explain the nature and scope of the inspection.
- Request that a member/representative accompany the inspector.
- Ask to review appropriate safety records, plans and documentation.

The PESH inspectors are, by law, permitted to interview members in private, take photographs, conduct tests and collect environmental samples. The Department representative will contact Corporation Counsel prior to the interview.

# Rye Fire Department

## Policy Manual

### *Public Employee Safety and Health Bureau Inspections*

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Department representatives should make reasonable accommodations to provide inspectors access to available members and materials required to complete the inspection. Any statements made to inspectors are admissible in judicial hearings. Questions of a sensitive nature or to which the member is unsure of how to respond may be referred to the person at the Department who is the subject matter expert on the topic.

At the conclusion of the inspection, the PESH inspector will hold a closing meeting with the Public Safety Commissioner or Career Captain to discuss any alleged safety standard violations and any requirements for abatement.

Any time there is a PESH inspection, violation and/or citation, the Career Captain shall ensure that notifications are made to the department's Health and Safety Officer, risk manager and legal counsel, and that the Department conducts an appropriate internal investigation and adequately addresses all PESH findings. Any violations or problems noted during the inspection should be corrected as quickly as possible.

# Division of Safety and Health Notification of Illness, Injury or Death

## 907.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the Department to notify the New York State Department of Labor's Division of Safety and Health (DOSH) of employment-related illnesses, injuries or deaths of any department members.

## 907.2 POLICY

The Department will comply with DOSH reporting requirements in the event of a serious illness, injury or death.

## 907.3 MANDATORY NOTIFICATION

DOSH shall be notified if a member dies or two or more members require inpatient hospitalization as a result of a work-related incident. Notification shall occur within eight hours of the incident, or knowledge of the incident, and shall be by telephone or in person at the nearest DOSH office (12 NYCRR § 801.39).

If a work-related incident is not initially reportable but a member dies within six months of the incident as a result, DOSH shall be notified by the Department within eight hours of learning of the death of the member.

## 907.4 REQUIRED INFORMATION

DOSH requires the following information, if available, to be submitted with the notification:

- (a) The location and time of the incident.
- (b) The number of fatalities or hospitalized members.
- (c) The names of any injured members.
- (d) The department's contact person and his/her phone number.
- (e) A brief description of the incident.

After-hours notifications should be handled by the on-duty Career Lieutenant, who shall notify the Career Captain for direction.

# Driver License Requirements

## 1010.1 PURPOSE AND SCOPE

The purpose of this policy is to establish procedures to ensure that all Rye Fire Department members who drive as a part of their duties have and maintain required driving licenses.

## 1010.2 POLICY

In order to promote driver safety, it is the policy of the Rye Fire Department that any member who is assigned duties that require him/her to drive department vehicles or equipment, or drive a privately owned vehicle while conducting department business, has and maintains driving privileges and licenses consistent with his/her duties.

## 1010.3 REQUIREMENTS

Every City of Rye career firefighter must have and maintain a valid drivers license issued by their state of residence as a condition of employment. Any volunteer member who is assigned duties that require him/her to drive department vehicles, equipment or private vehicles shall be required to obtain and maintain a valid driver license.

### 1010.3.1 REVIEW OF RECORDS

The Career Captain shall ensure that the driving records of all members who are assigned duties that require driving while conducting department business, to confirm each driver has a valid driver license and to monitor driving records for potential problem behavior.

The officer appointed to monitor driving records shall be responsible for reviewing the driver license reports as part of the hiring process and any time an incident occurs that affects a member's eligibility to drive.

Whenever the officer appointed to monitor driving records becomes aware of changes that could affect a member's eligibility to drive, the officer should notify the affected member, the member's immediate supervisor and the Health and Safety Officer.

### 1010.3.2 CURRENT EMPLOYEES

Driving records of existing members shall be evaluated annually or at the request of the Career Captain or designee, to confirm that the member has a valid driver license and to review any traffic violations and accidents.

Any career member who drives a vehicle while conducting department business must immediately notify the Career Captain of any suspension, revocation or other change in the status of his/her driver license. Any violation of this procedure may result in disciplinary action, up to and including termination.

Any member who does not possess a valid license shall not drive any vehicle while conducting department business.

# Rye Fire Department

## Policy Manual

### *Driver License Requirements*

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If a member's driver license is suspended, revoked or becomes invalid, the Department may, at its discretion, take any combination of the following actions:

- (a) Assign a member to duties which do not require driving provided:
  - 1. The member can still perform the majority of his/her job duties.
  - 2. There is minimal impact on the Department work output.
- (b) Place a member on leave without pay for up to a maximum of six months from the date of the DMV report pending license reinstatement, provided the license is able to be reinstated. The member may use any accrued vacation or personal leave during this time.

Any member who is unable to obtain reinstatement of his/her driver license after 6 months, or beyond, of suspension may be subject to disciplinary action, up to and including termination.

# Reporting for Duty

## 1011.1 PURPOSE AND SCOPE

This policy describes the department's expectations of its employees when reporting for duty, to ensure that all members are fully capable of functioning in their capacity.

## 1011.2 POLICY

It is the policy of this department to identify the expectations required of its members when reporting for duty in order to provide efficient and quality services to the community and to provide for the safety of its members.

## 1011.3 PUNCTUALITY

All members should be punctual and be ready to immediately perform their duties at the assigned time.

## 1011.4 RELIEF

Members are required to remain on-duty until relieved or at the direction of the Career Lieutenant or Career Captain. Upon entering the station, it is the member's responsibility to contact the member being relieved and receive a briefing.

Lieutenants shall remain on-duty until change-of-crew unless they are relieved or otherwise directed by the Career Captain. Lieutenants may not be absent from their place of assignment without the specific permission of the Career Captain.

## 1011.5 READINESS FOR DUTY

Upon reporting for duty, all members should prepare themselves and their gear to be immediately available to respond to calls for service. This should include, but is not limited to, placing personal protective equipment (PPE) on the member's assigned apparatus.

## 1011.6 PERSONAL APPEARANCE

All members should don the appropriate uniform prior to the start of their work assignments and be properly attired at all times when representing the Department. Each member should wear the appropriate uniform or protective equipment that has been approved for the activity being performed.

## 1011.7 CLEANLINESS

All members should keep their persons, uniforms, desks, cars, beds and lockers in a neat and clean condition. If a persistent problem is noticed, the member should be notified immediately.

### *Reporting for Duty*

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#### **1011.8 INABILITY TO REPORT FOR DUTY**

Members should notify their Lieutenant as soon as practicable of any inability to report for duty at the time required. If members are unable to make contact with the Lieutenant at the duty station, members should notify the duty Career Captain.

#### **1011.9 EMERGENCY RECALL**

Upon receipt of an emergency recall, without delay, members should secure and/or stabilize their home and family, and report for duty at the appropriate work location. Members shall recognize the potential for emergency recall and take measures in advance to properly prepare their families. Except when otherwise instructed, members should travel to their normal work assignment once they have received the notice of recall. Members shall not leave their duty assignments until properly relieved. Members shall follow the procedures detailed in the Emergency Recall Policy.

#### **1011.10 RELIEVED FROM DUTY FOR VIOLATIONS**

The Career Captain may relieve a member under his/her command from duty, when, in the Career Captain's judgment, an alleged offense committed is sufficiently serious to warrant immediate action. A report of such action shall be immediately made to the Public Safety Commissioner, followed by written charges and documentation in accordance with department procedures.



# Uniform Regulations

## 1029.1 PURPOSE AND SCOPE

The purpose of this policy is to establish uniform regulations for members in order to enhance the department's overall professional and positive image.

## 1029.2 POLICY

It is the policy of the Rye Fire Department that members shall wear the proper uniform at all times when on-duty or engaged in department-related activities off-duty. Members shall maintain an adequate supply of uniforms to meet the needs of their assignment and maintain the uniforms in an acceptable condition. This policy does not supersede department regulations regarding the use of any personal protective equipment (PPE).

## 1029.3 STANDARD WORK UNIFORM

The standard work uniform for Lieutenants and firefighters shall consist of the navy blue short- or long-sleeve shirt with department recognized embroidery or imprinted badge, navy blue trousers or shorts, department approved belt and department approved footwear.

The standard work uniform shall be worn as directed. Members are not required to wear the standard work uniform underneath personal protective equipment (PPE) in order to complete the PPE ensemble.

Officers shall wear appropriate rank insignia on the standard work uniform.

### 1029.3.1 UNIFORM JACKETS

Department approved uniform jackets may be worn as described in this subsection:

- At any time over the standard work uniform shirt
- For an emergency response, over an approved t-shirt
- In transit to and from a physical fitness location
- Uniform jackets are not fire resistive and shall not be worn underneath PPE
- A long-sleeve jacket that is department-issued may be worn with a long-sleeve or short-sleeve shirt
- Officers shall wear appropriate rank insignia on any uniform jacket

### 1029.3.2 T-SHIRTS

Official department on-duty t-shirts may be worn:

- Under the standard work uniform shirt.
- Uncovered and tucked into the trousers, at the Lieutenant's discretion, while working at the fire station or while engaged in company level manipulative training that does not require PPE.

## *Uniform Regulations*

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### 1029.3.3 BASEBALL CAPS

Official department on-duty baseball caps may be worn, at the discretion of the Lieutenant, except:

- When a helmet is required.
- At formal or semi-formal events or occasions.

### 1029.4 DRESS UNIFORMS

Dress uniforms shall be worn as directed by the Career Captain and when attending the following types of events:

- Funerals and memorials
- Formal department functions, such as graduations and badge ceremonies
- Formal City functions
- Other functions as determined by the Career Captain

### 1029.5 UNIFORM MAINTENANCE

- Uniforms shall be clean, neat and in good condition and should fit well.
- Boots and belts shall be clean and polished with black polish.
- Metal badges shall be clean and free from excessive scratches.

## Badges

### 1030.1 PURPOSE AND SCOPE

The name of the Rye Fire Department and the Department badge and uniform patches are property of the Department. This policy establishes the rules associated with Rye Fire Department badges and any likeness of the badge.

### 1030.2 POLICY

The Rye Fire Department may issue members of the Department a curved uniform badge for use or display in compliance with this policy.

Only authorized badges issued or formally authorized by this department shall be displayed, carried or worn by members while on-duty or otherwise acting in an official or authorized capacity.

### 1030.3 BADGE TYPES

#### 1030.3.1 SWORN, APPOINTED OR ELECTED MEMBER FLAT BADGES

Sworn, appointed or elected members may, at their own expense and with the written approval of the Career Captain, purchase a flat badge that can be carried in a wallet.

A sworn, appointed or elected member may sell, exchange or transfer a flat badge only to another sworn, appointed or elected member of the Rye Fire Department and only with the written approval of the Career Captain.

#### 1030.3.2 CIVILIAN MEMBER BADGES

Curved uniform badges issued to Civilian personnel shall be clearly marked to reflect the position of the assigned member (e.g., dispatcher, Public Information Officer, inspectors).

- (a) Civilian personnel shall not display the department badge except as a part of the uniform and while on-duty, or otherwise acting in an official and authorized capacity.
- (b) Civilian personnel shall not display the department badge or represent themselves, on- or off-duty, in such a manner which would cause a reasonable person to believe that they occupy the rank or position of any other member of the Department.
- (c) Civilian personnel may not purchase, carry or display a flat badge.

#### 1030.3.3 MOURNING BADGE

Uniformed members shall wear a black mourning band across the uniform badge whenever a firefighter dies in the line of duty. The following mourning periods will be observed:

- (a) A firefighter of this department: From the time of death until midnight on the 14th day after the death.
- (b) A firefighter from this or an adjacent county: From the time of death until midnight on the day of the funeral.

### *Badges*

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- (c) Funeral attendee: While attending the funeral of an out-of-region firefighter.
- (d) As directed by the Career Captain.

#### **1030.4 LOSS OF BADGE**

Any member who loses any badge must immediately report the loss to his/her supervisor. A badge should be considered lost whenever it is not in the direct control of the member.

#### **1030.5 UNAUTHORIZED USE OF BADGES**

No badge shall be issued to anyone other than a current member of the Department. Department badges are for official use only.

The department badge, uniform patch or any likeness thereof shall not be used for personal or private reasons including, but not limited to, letters, memoranda or electronic communications, such as email, websites or Web pages.

Members may not use the department badge, uniform patch or department name in any material (printed matter, products or other items) without approval of the Public Safety Commissioner.

Members shall not loan their department badge to others and shall not permit the badge to be reproduced or duplicated.

#### **1030.6 PERMITTED BADGE USE BY MEMBER GROUPS**

The likeness of the department badge shall not be used by any member group without the express prior authorization of the Public Safety Commissioner and shall be subject to the following:

- (a) The member associations may use the likeness of the department badge for merchandise and official association business provided the merchandise is used in a clear representation of the association and not the Rye Fire Department. The following modifications shall be included:
  - 1. Any text referring to the Rye Fire Department shall be replaced with the name of the member association.
  - 2. The badge number portion of the image shall display the name or acronym of the member association.

# Identification Cards

## 1031.1 PURPOSE AND SCOPE

The purpose of this policy is to establish the guidelines for issuing and possessing Rye Fire Department identification cards. Any image or likeness of the identification card and the name of the Rye Fire Department are the property of the Department and their use shall be restricted as specified in this policy.

## 1031.2 POLICY

It is the policy of the Rye Fire Department that identification cards shall be issued to all department members. All members shall be in possession of their department-issued identification card at all times while on-duty or otherwise acting in an official or authorized capacity. The use and display of department identification cards shall be in compliance with this policy.

## 1031.3 IDENTIFICATION CARD CONTENT

Department-issued identification cards shall include the following information:

- The department name
- An image of the department patch
- A photograph of the member
- The full name of the member
- The rank of the member
- The member's employee identification number
- The member's signature
- The date of appointment to the member's current rank or position
- The department's mailing address
- A statement indicating that the identification card is the property of the Rye Fire Department and that if found, the card must be returned to the Department

## 1031.4 RETIREE IDENTIFICATION CARD

Upon honorable retirement members may be issued a retiree identification card. The card shall clearly indicate that the holder is a "Retired" member of the Department.

## 1031.5 UNAUTHORIZED USE

Department identification cards may not be displayed for any purpose other than official use.

Members may not use an image or likeness of the department identification card in any material (printed matter, products or other items) without prior written approval from the Career Captain.

# Rye Fire Department

## Policy Manual

### *Identification Cards*

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Members shall not loan department identification cards to others and shall not permit the identification card to be reproduced or duplicated.

#### **1031.6 LOSS OF DEPARTMENT IDENTIFICATION CARD**

The loss of the department identification card must be immediately reported to the Department. An identification card should be considered lost whenever it is not in the direct control of the member.

#### **1031.7 REPLACING IDENTIFICATION CARDS**

Identification cards should be replaced whenever they become damaged, faded or otherwise difficult to read, whenever a member changes rank or when the member's photograph becomes outdated or no longer presents an accurate depiction of the member.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: April 4, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:**

Open a public hearing, to adopt a new local law amending Chapter 1-12, "Definitions" under "General Provisions," to add a definition for "holiday," and create a uniform use of the word "holiday" throughout the City Code of the City of Rye by also amending "Telecommunications," §185-4, and "Vehicles and Traffic" §191-38.1, §191-42, §191-46.

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council set the public hearing.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

**BACKGROUND:** See attached memo and draft law.

Carolyn D'Andrea  
City Clerk  
1051 Boston Post Road  
Rye, New York 10580



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<http://www.ryeny.gov>

# Office of the City Clerk

## Memorandum

To: Greg Usry, City Manager  
From: Carolyn D'Andrea, City Clerk  
Date: 5/19/2023  
Re: City Code Update: Holiday Definition

Holidays are mentioned throughout the code with respect to a variety of issues, such as parking, construction, leaf blowers, and other important areas of note. However, staff has discovered that the definition for “holidays” is unclear and has inconsistent word placement, which may cause confusion and a lack of continuity in the way that the city enforces its own laws without a proper definition.

To address these inconsistencies, staff recommends that the definition for “holidays” should be added to the definition section of the code (Chapter 1 – General Provisions), followed by a consistent use of the term (i.e., eliminating the use of “federal holiday,” “legal holiday,” or any other iterations of the word “holiday.” The proposed definition is:

### **HOLIDAYS**

The days of the year that fall on New Year’s Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

Please note that the definition for holidays is proposed to be a basic list of universally-recognized holidays within the U.S. This definition does not take away from the provisions of the code that add *more* holidays to their limitations, such as the issues surrounding blasting, rock chipping, leaf blowing, or construction. Those extra holidays will still be specifically included in each of those chapters. Please see the table below to understand the breakdown of the proposed definition, as well as the extra delineated holidays that are specifically mentioned in the code:



<b>Code Areas</b>	<b>Holidays Included Currently within City Code</b>
Code-Wide Holidays (as proposed in definition chapter)	New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day, and Christmas Day.
Rock Chipping/ Blasting	Holidays + Rosh Hashanah Yom Kippur Day after Thanksgiving through Thanksgiving weekend Day after Christmas through New Year's Eve
Leaf Blowers	Holidays + Easter Rosh Hashanah Yom Kippur
Construction	Holidays + Rosh Hashanah Yom Kippur

## LOCAL LAW 2023

A local law to amend Chapter 1-12, "Definitions" under "General Provisions," to add a definition for "holiday," and create a uniform use of the word "holiday" throughout the City Code of the City of Rye by also amending "Explosives, Blasting and Mechanical Rock Excavation," §88-10, §88-16, "Leaf Blowers," §122-5 and 122-7, "Noise," §133-8, "Telecommunications," §185-4, and "Vehicles and Traffic" §191-42, §191-46.

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

**Section 1.** §1-12, "Definitions," is hereby amended to add the following definition:

### **HOLIDAYS**

**For purposes of the City Code, the term 'Holidays' shall refer to the following days of the year: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day, and Christmas Day. This definition shall not, and is not intended to, govern the use of the term 'Holidays' with respect to the City's labor contracts or for any other purpose.**

**Section 2.** Chapter 88, "Explosives, Blasting and Mechanical Rock Excavation," is hereby amended under §88-10 and §88-16, as follows:

#### **§ 88-10 Hours blasting is allowed; permit conditions.**

- A. No person shall engage in blasting operations within the City of Rye after the hour of 3:30 p.m. or before 9:00 a.m. on weekdays or at any time on Saturday and Sunday; or on any **holidays, or on Rosh Hashanah, Yom Kippur, or the day after Thanksgiving through Thanksgiving weekend, or December 26-31** of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day through Thanksgiving weekend and Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, blasting will be prohibited within 750 feet of a school on testing days.

#### **§ 88-16 Mechanical rock excavation permit.**

- D. No person shall engage in mechanical rock excavation, as defined in § 88-15, within the City of Rye before the hour of 9:00 a.m. or after 3:30 p.m. on weekdays or at any time on Saturday and Sunday; or on any of the following holidays and time periods: New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, or on Rosh Hashanah, Yom Kippur, **the day after** Thanksgiving Day through Thanksgiving weekend, **or December 26-31 and** Christmas Day through New Year's Day except under authority of a special permit issued by the City Manager. In addition, mechanical rock removal, including mechanical rock

excavation, will be prohibited within 750 feet of a school on testing days.

**Section 3.** Chapter 122, “Leaf Blowers,” is hereby amended under §122-5 and §122-7, as follows:

**§ 122-5 Days and hours of operation of motorized landscaping equipment.**

- B. The use of motorized landscaping equipment, including lawn mowers, leaf blowers and other outdoor machine-powered equipment, is not permitted on ~~the following~~ holidays, **Rosh Hashanah or** . ~~New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Easter, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Yom Kippur, Thanksgiving Day, and Christmas Day.~~

**§ 122-7 Penalties for offenses.**

- B. Conducting motorized landscaping work outside of permitted hours or on ~~restricted~~ holidays. The following parties shall have committed a violation of this chapter if it is not complied with:
- (1) The party(ies) operating the motorized landscaping equipment; and
  - (2) The party who employed the person(s) who operated the motorized landscaping equipment at the time of violation; and
  - (3) The party who owns, rents or otherwise controls the property where the violation occurs.

**Section 4.** Chapter 133, “Noise,” is hereby amended under §133-8, as follows:

**§ 133-8 Construction work prohibited at certain hours and on certain days.**

[Added 6-18-2003 by L.L. No. 2-2003; amended 4-11-2007 by L.L. No. 2-2007; 5-7-2008 by L.L. No. 4-2008; 7-8-2015 by L.L. No. 6-2015; 5-27-2020 by L.L. No. 6-2020; 12-21-2022 by L.L. No. 10-2022]

- A. No person shall engage in construction work earlier than 8:00 a.m. or later than 6:00 p.m. on weekdays; earlier than 10:00 a.m. or later than 5:00 p.m., prevailing time, on Saturdays; or at any hour on Sundays or any ~~of the following~~ holidays: ~~New Year's Day, Presidents' Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, **Rosh Hashanah or** Yom Kippur, Thanksgiving Day, Christmas Day and New Year's Day.~~

**Section 5.** Chapter 185, “Telecommunications,” is hereby amended under § 185-4, “Definitions,” to amend the current definition of “HOLIDAYS” as follows:

## **HOLIDAY**

~~A day in which a substantial portion of the area's workers are exempt from work even though paid, including but not limited to all holidays recognized by either the state or federal government.~~

## **HOLIDAYS**

**The days of the year that fall on New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day, Thanksgiving Day, and Christmas Day.**

**Section 6.** Chapter 191, "Vehicles and Traffic," is hereby amended under §191-42, and §191-46 as follows:

§ 191-42 Use of off-street area for parking storage.

No person shall use any off-street public parking area maintained by the City of Rye for the regular storage of an automobile or other vehicle at night, ~~legal~~ holidays or on Sundays.

§191-46. Commuter Parking areas established.

No person shall be permitted to park an automobile or other vehicle or shall permit an automobile or other vehicle to remain in or upon the public parking places or areas described as follows between the hours of 7:00 a.m. and 7:00 p.m. each day except Sundays and ~~legal~~ holidays, unless the owner of such vehicle shall have a tag or license hereinafter described. Said public parking places consist of those four parcels of land located:

- A. On property owned and controlled by the Metropolitan Transit Authority, located on the southeasterly side of Purchase Street in the City of Rye, County of Westchester and State of New York, substantially as shown on the plan or map entitled "Map of Property to be Leased by the City of Rye, Westchester County, New York, surveyed as in possession, June 16, 1952, Russell Munson, Surveyor, 11 William Street, White Plains, New York, last revised March 31, 1953," and thereon designated as "Parcels A and B," a copy of said map or survey having heretofore been filed in the office of the Clerk of the City of Rye.
- B. Including also three parcels of land owned and controlled by the City of Rye and shown and designated on the Tax Maps of the City of Rye as "Sheet 146.07, Block 1, Lot 23"; "Sheet 146.07, Block 1, Lot 14"; and "Sheet 139.19, Block 3, Lot 80."

**Section 7.** This local law shall take effect July 1, 2023 after filing with the Secretary of State.

(Underline and bold means addition)

(~~Strikethrough~~ means deletion)



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: June 11, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Continued Public Discussion and Possible Consideration of City Council Resolution Re-Stating its role as Lead Agency and Directing City Staff and Consultants to Prepare the necessary SEQRA and other documentation for the City Council's Consideration in Connection with the Construction of a Turf Field at Nursery Field. [Please click [HERE](#) for links to information and prior discussions]

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council continue the discussion and consider the attached resolution.

**IMPACT:** ☐ Environmental ☒ Fiscal ☒ Neighborhood ☐ Other:

**BACKGROUND:** See attached.

## RESOLUTION

### **City Council Resolution Re-Stating its role as Lead Agency, Directing City Staff and Consultants to Prepare the necessary SEQRA and other documentation for the City Council's Consideration in Connection with the Construction of a Turf Field at Nursery Field**

WHEREAS, in 2019 the Rye City Council engaged consulting engineers to consider modifications to improve the playability of Nursery Field located at 421 Milton Road in response to a potential resident funds donation offer for a synthetic turf field; and

WHEREAS, between the fall of 2019 through February 2020, the City Council received a variety of reports and information from its consultants and staff regarding the viability and feasibility of various improvement options and turf choices to improve the playability of Nursery Field; and

WHEREAS, all reports and information were made available to the public on the City website (<https://www.ryeny.gov/services/projects-and-information/nursery-field-project-information>) ; and

WHEREAS, there was questioning and extensive comment both for and against various field improvement options presented at City Council meetings and in numerous written submissions from area neighbors, field user groups, the City's Recreation Commission, City Board and Commission members, community groups and organizations and the general public; and

WHEREAS, there were two public work sessions held in February 2020 in which the City Council heard consultant presentations and public comment regarding a variety of improvement options and playing surfaces (<https://www.ryeny.gov/services/projects-and-information/nursery-field-project-information> ); and

WHEREAS, the City Council suspended consideration of Nursery Field improvements as a result of the Covid-19 pandemic;

WHEREAS, the City Council is proceeding on the basis of the offer of another potential funds donation for a synthetic turf field; and

WHEREAS, there was an updated consultant presentation and public comment at the City Council's May 24, 2023 meeting (<https://www.ryeny.gov/home/showpublisheddocument/16225/638205278476070000>); and

WHEREAS, the installation of a synthetic turf field at Nursery Field is considered a Type I Action that requires the preparation of additional plans, studies and forms to comply with the requirements of the State Environmental Quality Review Act (SEQR).

NOW, THEREFORE, BE IT RESOLVED, the City Council hereby restates its role as Lead agency and classifies the Proposed Action as a Type I action under SEQRA; and

BE IT FURTHER RESOLVED, that the City Council identifies a Proposed Action for purposes of environmental review as a synthetic turf field with a playing surface elevated above the 100-year FEMA flood elevation, including a robust sub-surface drainage system and an appropriate field base and infill material (other than crumb rubber) that is sensitive to the health and safety of field users and that does not significantly adversely impact the environmental functions of adjacent wetlands; and

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the expenditure of \$150,000 from the General Capital Projects Account to further advance the design of a turf field to 60% design and to retain the services of an environmental/planning consultant to assist in the preparation of the necessary studies and reports, including the stormwater pollution prevention plan to be all accomplished as soon as possible; and

BE IT FURTHER RESOLVED, that the City Council hereby directs City Staff and its consultants to prepare as soon as possible an Environmental Assessment Form (EAF), Coastal Assessment Form (CAF), stormwater pollution prevention plan (SWPPP), hydrological studies, among other necessary relevant studies and information of the Proposed Action for City Council and review as required by SEQR; and

BE IT FURTHER RESOLVED, the City Council refers the Proposed Action, once the application materials are completed, to the Planning Commission for an advisory opinion on the impacts to the wetlands and also the Proposed Action's consistency with the Local Waterfront Revitalization Plan.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 17, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:**

Consideration to set a public hearing for July 12, 2023, to amend Chapter 191, Article III "Parking Regulations" of the Code of the City of Rye, by amending § 191-21 "Parking, Standing or Stopping." to prohibit parking, standing or stopping from 100 ft north of Parsons St to the entrance of Old Post Road on the west side of Boston Post Road

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council set the public hearing.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

**BACKGROUND:** See attached draft law.



**DRAFT**

LOCAL LAW NO. \_\_\_\_\_-2023

**A Local Law to amend Chapter 191, Article III “Parking Regulations” of the Code of the City of Rye, by amending § 191-21 “Parking, Standing or Stopping.” to prohibit parking, standing or stopping from 100 ft north of Parsons Street to the entrance of Old Post Road on the west side of Boston Post Road**

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

**Section 1.** Chapter 191, titled “Vehicles and Traffic,” Article III titled “Parking Regulations” is hereby amended in the Rye City Code as follows:

New material is underlined and in **bold**.

**Article III**

**Parking Regulations**

**§ 191-21 Parking, standing or stopping.**

The parking, standing or stopping of vehicles is hereby prohibited in the following locations:

Name of Street	Side	Location
Billington Court	North	
<b><u>Boston Post Road</u></b>	<b><u>West</u></b>	<b><u>From 100 ft North of Parsons Street to the entrance of Old Post Road.</u></b>
Central Avenue	North	From the Boston Post Road to the west side of the Blind Brook
Central Avenue	South	From Loewen Court to the Boston Post Road
Coolidge Avenue	West	From Osborn Road to Harding Drive
Cornell Place	Both	
Dearborn Avenue	Both	East of Forest Avenue, including the turnaround at the easterly end thereof*
Forest Avenue	East	From Redfield Street to Playland Parkway

Franklin Avenue	North-east	From a point approximately 30 feet north of Sonn Drive
Hewlett Avenue	East	Between the crosswalks extending from Robert Crisfield Place to the fire lane driveway exit, when school is in session, from 8:00 a.m. to 9:00 a.m. and 2:30 p.m. to 3:30 p.m.
Kirby Lane	Both	From its westernmost intersection with Mill Pond to Van Rensselaer Road, from 8:00 p.m. to 6:00 a.m.
Locust Avenue	Both	From Purchase Street to the east end of Mead Place
Locust Avenue	South	From main firehouse to Purchase Street
Midland Avenue	Front of No. 382	
Midland Avenue		
Midland Avenue		
Midland Avenue	West	From Apawamis Avenue to Goldwin Street from 8:00 a.m. to 9:00 a.m. and 2:30 p.m. to 3:30 p.m., Monday through Friday
Milton Road	West	From Fairlawn Street to driveway of marina
Platt Lane	South	Entire length, from 8:00 a.m. to 9:00 a.m. and 2:30 p.m. to 4:00 p.m. on school days
Purchase Street	West	From Elizabeth Street to driveway of 231 Purchase Street
Purdy Avenue	Both	Purchase Street to First Street
Purdy Avenue	South	From School Street to Post Road

NOTE:

\*Except that the parking, standing or stopping of vehicles on the northerly side of the turnaround for discharging or loading of passengers only is permitted.

## **Section 2. Severability.**

The invalidity of any word, section, clause, paragraph, sentence, part, or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

**Section 3.**      **Effective Date.**

This local law shall take effect immediately after filing with the Secretary of State.

No stopping, standing or parking along red line







# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 17, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:**

Resolution authorizing the City Manager to enter into a Right-of-Way and Corridor Agreement between the City of Rye and TC Systems, Inc to grant permission for TC Systems to utilize public rights-of-way within the geographic boundaries of the City, to construct, maintain and operate fiber optic cable and related necessary equipment.

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council consider authorizing the request.

RESOLVED the City Council authorizes the City Manager to enter into a Right-of-Way and Corridor Agreement between the City of Rye and TC Systems, Inc.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

See attached agreement.



445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
T 914 761 1300  
F 914 761 5372  
cuddyfeder.com

Christopher B. Fisher, Esq.  
[cfisher@cuddyfeder.com](mailto:cfisher@cuddyfeder.com)

May 25, 2023

**VIA FEDERAL EXPRESS AND E-MAIL TO [gusry@ryeny.gov](mailto:gusry@ryeny.gov)**

Greg Usry  
City Manager  
City of Rye  
1051 Boston Post Road  
Rye, New York 10580

Re: TC Systems, Inc.  
Right-of-Way & Corridor Agreement  
Fiber Installation Along Existing Utility Pole Lines  
Request for City Consent

Dear Mr. Usry:

TC Systems, Inc. (the "Company," a wholly-owned subsidiary of AT&T Inc.) is seeking City consent to install aerial fiber optic cables along existing Consolidated Edison utility pole lines. You may recall that the Company discussed its initial goals with the City last year and a request by an AT&T affiliate, New Cingular Wireless Services PCS, LLC, to provide fiber backhaul services to a rooftop wireless site previously installed at Rye Town Park pursuant to City approvals. Drawings of the proposed fiber route connections to Rye Town Park are enclosed.

At the time of the Company's initial outreach it was advised that a right-of-way and corridor access agreement would be required by the City. In speaking with Kristen Wilson, the City's Attorney, we identified that the Company and the Village of Port Chester, New York previously entered into an agreement for fiber installations in the Village and that the City of Rye previously charged another company a one-time \$10,000 fee for consent to access City rights-of-way for fiber installations. Enclosed is a draft agreement in substantially the same form as the Company's agreement with the Village and incorporating the City's fee for fiber access Citywide.

This proposed Agreement is being provided for review and approval by the City to incorporate the terms and conditions of its consent to the Company's access as authorized under Section 27 of the New York Transportation Corporations Law, Section 253 of the Federal Telecommunications Act of 1996, and the City of Rye City Code.

Also enclosed, for reference by the City is a copy of the following:



May 25, 2023  
Page 2

- The drawings and diagrams of the initial fiber corridor as referenced in the drafted agreement as "Exhibit A";
- The Company's Pole Attachment Agreement with Consolidated Edison Company of New York, Inc.; and
- NYS PSC Case 14-C-0093 – Approval of the Company's corporate restructuring in reference to the Company's relevant Certificates of Public Convenience and Necessity (CPCN), which provides the Company's necessary authority to operate as a State-franchised public utility.

We would greatly appreciate your and the City Attorney's review of the enclosed and should this matter require a City Council resolution that it be placed on the June 14<sup>th</sup> Agenda for consideration and adoption of same. Should you have any questions, please do not hesitate to contact me at [cfisher@cuddyfeder.com](mailto:cfisher@cuddyfeder.com) or 914-761-1300.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris B. Fisher", with a long horizontal flourish extending to the right.

Christopher B. Fisher

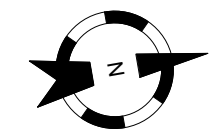
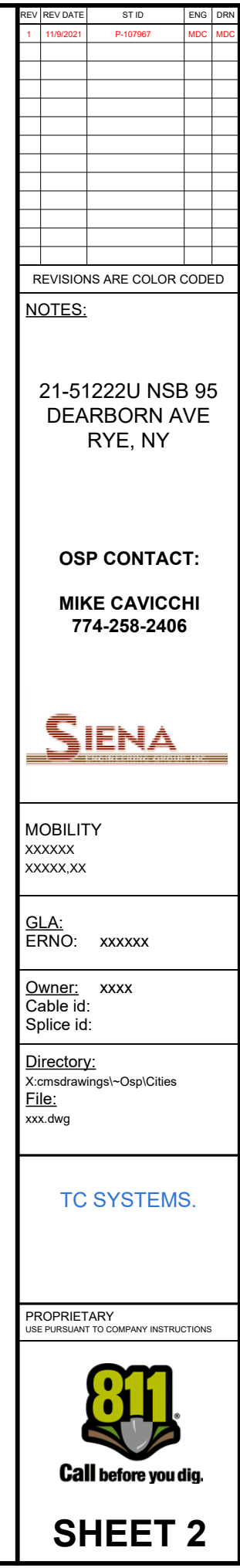
cc: Kristen Wilson, City Corporation Counsel  
Maximillian R. Mahalek, Esq.

## Diagram of Fiber Services Corridor





The site plan shows a property bounded by Rye Beach Ave to the west and Oakwood Ave to the east. The property is divided into several lots, including T62, 61, 60, and W59. Distances between the lots and the streets are marked: 75' from Rye Beach Ave to T62, 115' between T62 and 61, 110' between 61 and 60, 102' between 60 and W59, and 128' from W59 to Oakwood Ave. A north arrow is located in the upper right corner of the plan.



**SEE SHEET 1**

## MATCHLINE A

[illegible]

REVISIONS ARE COLOR CODED

NOTES:

21-51222U NSB 95  
DEARBORN AVE  
RYE, NY

**OSP CONTACT:**

**MIKE CAVICCHI**  
**774-258-2406**

MOBILITY  
XXXXXX  
XXXXX,XX

GLA:  
ERNO: xxxxxx

Owner: xxxx  
Cable id:  
Splice id:

Directory:  
X:\cmsdrawings\~Osp\Cities

File:  
xxx.dwg

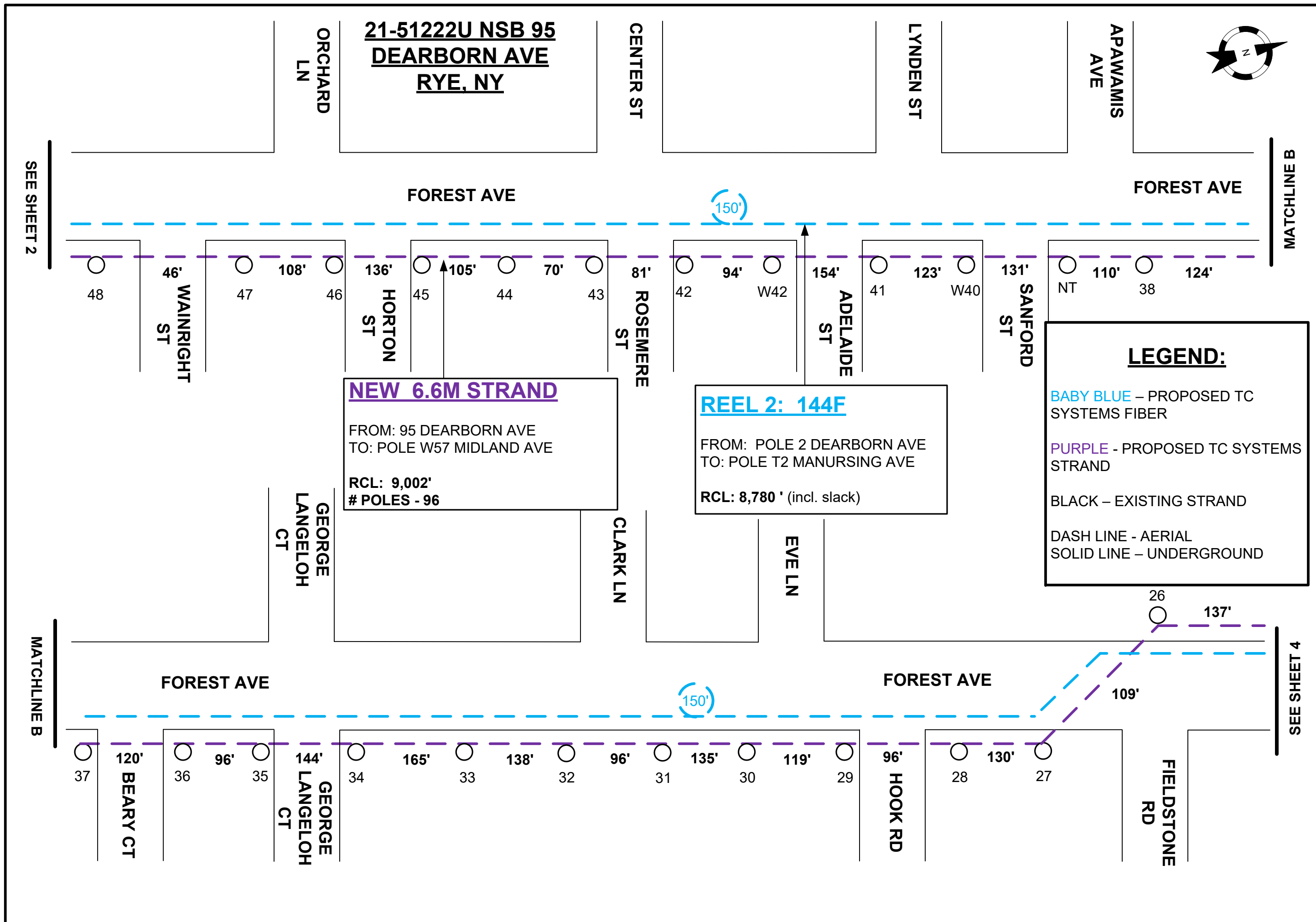
TC SYSTEMS.

PROPRIETARY  
USE PURSUANT TO COMPANY INSTRUCTIONS



**Call before you dig.**

**SHEET 2**

[illegible]

REVISIONS ARE COLOR CODED

NOTES:

21-51222U NSB 95  
DEARBORN AVE  
RYE, NY

**OSP CONTACT:**

**MIKE CAVICCHI**  
**774-258-2406**

MOBILITY  
XXXXXX  
XXXXX,XX

GLA:  
ERNO: xxxxxx

Owner:      xxxx  
Cable id:  
Splice id:

Directory:  
X:\cmsdrawings\~Osp\Cities  
File:  
xxx.dwg

TC SYSTEMS.

PROPRIETARY  
USE PURSUANT TO COMPANY INSTRUCTIONS



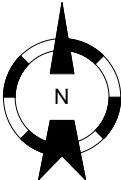
## Call before you dig

# SHEET 3



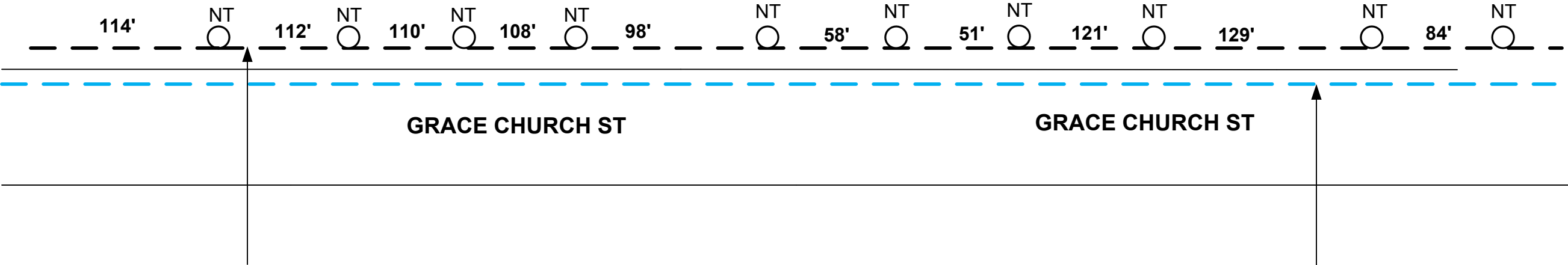


21-51222U NSB 95  
DEARBORN AVE  
RYE, NY



SEE SHEET 5

MATCHLINE E



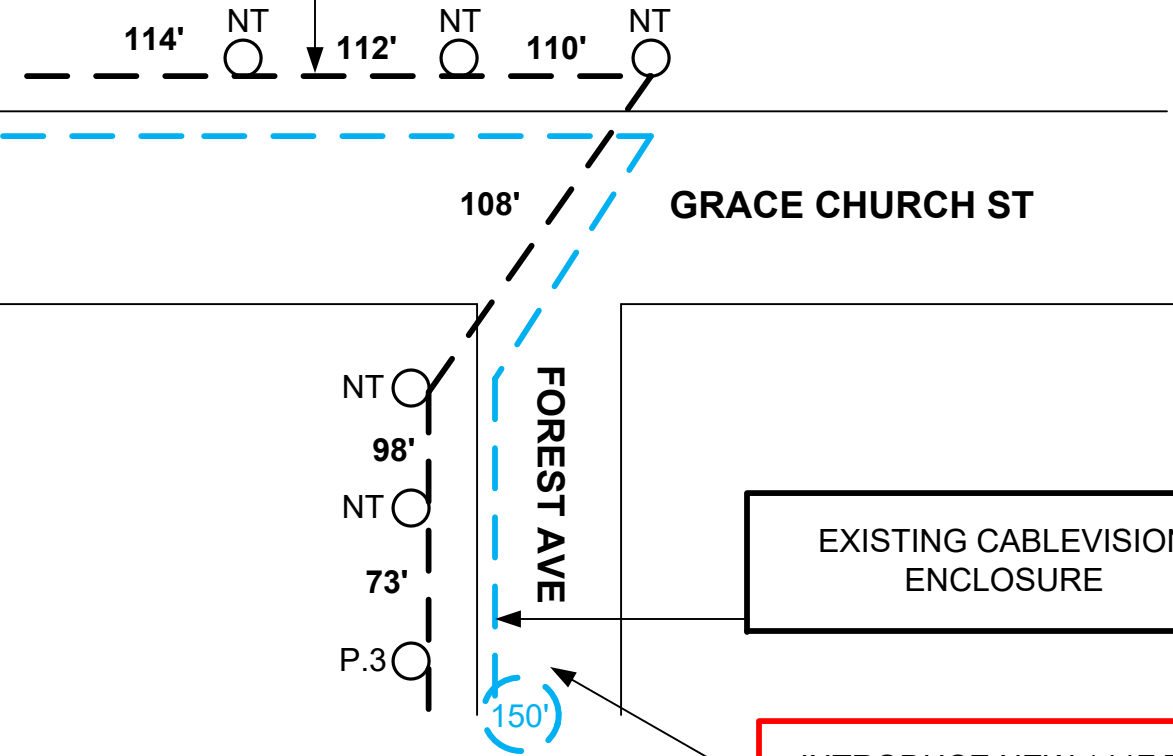
INSTALL 144F  
MICRO IN EXISTING  
AERIAL ID W/ 72F  
ROD/ROPE 1,600'

**REEL 3: 144F MICRO**

FROM: POLE T2 MANURSING AVE  
TO: POLE 3 GRACE CHURCH ST

RCL: 1,900' (incl. slack)

MATCHLINE E



**LEGEND:**

BABY BLUE – PROPOSED TC  
SYSTEMS FIBER

PURPLE - PROPOSED TC SYSTEMS  
STRAND

BLACK – EXISTING STRAND

DASH LINE - AERIAL  
SOLID LINE – UNDERGROUND

REV	REV DATE	ST ID	ENG	DRN
1	11/9/2021	P-107967	MDC	MDC

REVISIONS ARE COLOR CODED

NOTES:

21-51222U NSB 95  
DEARBORN AVE  
RYE, NY

OSP CONTACT:

MIKE CAVICCHI  
774-258-2406



MOBILITY  
xxxxxx  
xxxxx,xx

GLA:  
ERNO: xxxxxx

Owner: xxxx  
Cable id:  
Splice id:

Directory:  
X:\cmsdrawings\~Osp\Cities  
File:  
xxx.dwg

TC SYSTEMS.

PROPRIETARY  
USE PURSUANT TO COMPANY INSTRUCTIONS



# Pole Attachment Agreement

POLE ATTACHMENT AGREEMENT

AGREEMENT, made as of August 1, 1992 between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation having its principal office at 4 Irving Place, New York, New York, (hereinafter "Edison"), and Teleport Communications New York, a partnership having its principal office at One Teleport Drive, Staten Island, New York 10311 (hereinafter "LICENSEE").

WHEREAS, LICENSEE proposes to attach certain cables, wires and appurtenances to utility poles in New York City/ Westchester County ("the Franchise Area");

WHEREAS, Edison owns utility poles in the Franchise Area and has rights to poles owned by New York Telephone Company ("NYT"), both categories of poles being subject to the terms of a joint use agreement with NYT dated January 1, 1982; and

WHEREAS, Edison is willing to license attachments by LICENSEE to Edison-owned poles upon the terms and conditions more particularly set forth herein;

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, Edison and LICENSEE agree as follows:

ARTICLE I  
EXTENT OF PERMISSION

101. Area. The permission granted is limited to utility poles located in the Franchise Area.

102. Extent of License. The license is limited to the attachment of cables, wires and appurtenances solely for the purposes of the operation by LICENSEE of its service, as more particularly described and authorized in its franchise(s) or other appropriate governmental authorizations, copies of which have been supplied to Edison.

8/92



## ARTICLE II NATURE OF PERMISSION

201. Specific License Required. No general permission is granted hereunder. LICENSEE may not make an attachment to any pole until Edison grants a license for that specific attachment.

202. No Ownership: Nonexclusivity. No property rights in poles are created hereunder, but LICENSEE's rights in any pole shall be a mere license. Any license granted hereunder shall be nonexclusive and shall be subject at all times to the rights of Edison and NYT and to any existing contracts, licenses, rights, permits, or privileges granted with respect to the attachments. Edison retains the right to grant attachment or other rights of any nature to others.

203. Discontinuance of Use of Pole. Edison shall not be obliged to maintain a pole beyond the time necessary for its own service requirements. Edison shall give LICENSEE at least 90 days prior written notice of the discontinuance of any pole upon which LICENSEE maintains equipment. LICENSEE shall have the option of removing its equipment or of purchasing the pole at its depreciated book cost.

204. Rights Limited. Some utility poles in the Franchise Area have been installed pursuant to easements obtained from private property owners rather than under Edison's franchise rights. The easements may or may not permit LICENSEE attachments.

205. Assignment of Rights. To the extent permitted by the easements, Edison hereby assigns to LICENSEE on a nonexclusive basis, whatever rights it has under the easements to erect and maintain communications facilities.

206. No Obligation or Warranty. The assignment under Section 205 and any license granted by Edison are and shall be without warranty. LICENSEE shall be responsible for determining the extent of the rights granted and for obtaining at its sole expense any additional consents, easements, franchises or other rights.

## ARTICLE III MAKE READY WORK AND LICENSING

301. Written Application Required. No attachments of any nature shall be placed upon any pole by LICENSEE unless written application for a license shall have been made and granted. The application shall specify the location of the specific pole to which it is sought to make attachment. All plans or specifications describing the proposed attachments shall be in such detail as Edison may reasonably require for the purpose of determining the safety and propriety of the attachment and shall indicate

compliance with the National Electric Safety Code ("NESC").

302. Feasibility Study and Joint Inspection. Upon receipt of the written application, Edison shall study the feasibility of the proposed installation. Edison's study may include, among other things, surveys, physical inspections and technical and other engineering work. There shall also be a joint field inspection by Edison and LICENSEE. Whether or not the attachment is ultimately made, LICENSEE shall reimburse Edison for the cost of the study and the inspection.

303. (a) Make Ready Work. If Edison shall determine that the pole is available, it shall undertake to perform any work (hereinafter "Make Ready Work") required to make room for LICENSEE attachments. Make Ready Work shall include, but not be limited to, reinforcement, adjustment, reconstruction, anchoring, guying, protection, inspections during construction, and a subsequent inspection of LICENSEE construction work ("Post-Construction Survey"), but shall exclude the pro-rata cost of any work required to bring Edison's facilities up to its own specifications.

(b) Payment in Advance. Charges for Make Ready Work shall be billed in advance, together with the cost of the study and inspection under Section 302, and shall be payable in 30 days. Payments must be made prior to the commencement of work. Unless otherwise directed by the Public Service Commission ("PSC"), charges for Make Ready Work shall be in accordance with a schedule of unit costs filed with and approved by the PSC and made part of this Agreement, except that the charges for feasibility studies and joint inspections shall be based upon costs actually incurred.

(c) Contracting of Make Ready Work. Edison has no present plans to employ any outside contractor to perform Make Ready Work. However, if Edison should do so, LICENSEE shall pay an amount equal to the contractor's fees plus a premium of 10% in lieu of Edison's unit costs. Any contract shall be awarded in accordance with Edison's usual practices and in consultation with LICENSEE. Edison shall make available copies of all written contracts and work orders pertinent to Make Ready Work performed by the contractor.

(d) Statement of Make Ready Work. Edison shall submit to LICENSEE a statement describing Make Ready Work, which shall specify the person to perform the Make Ready Work and the cost, valid for 60 days. The estimated cost of any pole replacement necessary to accommodate LICENSEE facilities shall include the cost of rearranging Edison's facilities, the installed cost of the new pole and any removal costs. The cost shall be reduced by the percentage depreciation applicable to the removed pole, less its salvage value.

(e) Billing Disputes. Edison shall review the statement

of Make Ready Work with LICENSEE if requested. If the parties disagree about the reasonableness of any estimated cost, either party may request mediation by the Staff of the Department of Public Service, with the understanding that the Staff may refer the dispute to the PSC for resolution. The cost agreed on by the parties or ordered by the PSC shall be valid for thirty days after the date of the agreement or PSC order.

(f) Cost Changes. The cost of Make Ready Work shall reflect unit costs expected to be in effect at the time the work will be done. The cost may be adjusted, after the fact, to reflect any unforeseen overtime costs made necessary by LICENSEE's construction schedule. The provisions of Subdivision (e) of this Section 303 shall apply also to any such cost adjustments.

304. Decision to Attach; Payment. If LICENSEE decides not to proceed with a proposed attachment, it shall so notify Edison in writing and the application relating thereto shall be deemed cancelled. If LICENSEE decides to proceed with a proposed attachment, it shall so notify Edison in writing within 30 days of the submission of the statement of Make Ready Work. Payments under Section 303(b) must accompany such written notices. Failure so to notify Edison shall be deemed equivalent to a notice not to proceed.

305. Performance of Make Ready Work. Edison shall then perform its portion of the Make Ready Work, provided that Edison's work will not be performed at any time or under any conditions that might interfere with the service requirements of Edison, NYT or prior licensees.

306. License; No Attachment Until After Make Ready Work. LICENSEE shall not attach until Edison notifies it that all Make Ready Work is complete and thereafter issues a license for the attachment. The license shall be in the form annexed to this agreement, but Edison may revise the form from time to time.

307. Costs. "Costs", as the term is used in this Agreement, shall include the costs of all materials, supplies, engineering, labor (including normal overtime), supervision, taxes, overhead (including appropriate loadings for such items as relief and pension accruals, social security taxes, vacations, holidays, sickness and workers' compensation) and any other items associated with the work that are chargeable to Edison's accounts under the uniform system of accounts prescribed by the PSC.

308. Multiple Licensees. If a licensee already on the pole incurs Make Ready Work costs in order to provide space for a subsequent licensee, the prior licensee shall also be reimbursed by the subsequent licensee for its costs, excluding the pro-rata cost of any work required to bring the prior licensee's facilities up to specifications.



ARTICLE IV  
POLE ATTACHMENT RENTALS

401. Pole Attachment Rental Fee. LICENSEE shall pay to Edison, for each licensed attachment to an Edison-owned pole, a rental at the rate currently applicable under the rules of the PSC. Any filing with the PSC, proposing rate changes, shall be on such notice to LICENSEE as is required by the PSC. The rental shall be payable in semiannual advance installments, January 1 and July 1 of each year this Agreement remains in effect, and billed the immediately preceding December 15 and June 15, respectively. Rentals shall be pro-rated whenever this is made necessary by the effective date of a change in rate.

402. First Payment. To the first payment of rental for any attachment there shall be added a pro-rata amount for the portion of the half-year remaining after issuance of the license.

403. Rental Effective Date. Unless Edison receives reasonable notice to cancel a license, rentals shall accrue as provided in Sections 401 and 402 whether or not LICENSEE actually places its facilities on the pole or poles for which rental is charged.

404. Post-Construction Surveys. In addition to the initial Post-Construction Survey provided for in Section 303(a), Edison may perform subsequent Post-Construction Surveys, chargeable to LICENSEE at intervals consistent with PSC rulings. The charges for any additional Post-Construction Survey shall be at rates in accordance with the prescriptions of the PSC.

405. Charges for Unlicensed Attachments. For each unlicensed LICENSEE attachment discovered on an Edison-owned pole, Edison shall charge LICENSEE an amount equal to the lesser of five (5) years rental or the rental for such period of time as may represent the lesser of (a) the time since the last Post-Construction Survey or (b) the then total of LICENSEE and its assignors' or predecessors', years of operation in the Franchise Area at the rate current at the time of discovery. The discovery of unlicensed attachments at a ratio of one or more to every 70 authorized attachments shall justify an increase in the frequency of Post-Construction Surveys as provided in Section 404.

406. "Unlicensed Attachment" Defined. As used in this Agreement, the term "unlicensed attachment" means an attachment for which a license has not been obtained or for which the license has been cancelled, but does not include any licensed attachment mistakenly put on the wrong pole. A refund shall be paid to LICENSEE for any double billing due to the erroneous double licensing of an attachment.

407. Arrears. If rentals or other charges have not been paid within 30 days of bill mailing, late payment charges pursuant to

Edison's electric rate schedule (PSC No. 8) may be assessed on the arrears. Edison may suspend work under this Agreement whenever arrears occur, resuming only after the arrears and late payment charges have been paid.

ARTICLE V  
COMPLIANCE WITH LAW;  
MAINTENANCE OF FACILITIES

501. (a) Warranty of Franchise. LICENSEE represents that, before making any attachments, it shall obtain all appropriate governmental authority to do business and to erect and maintain its facilities in public highways.

(b) Rights to Program Material. If LICENSEE is a cable television operator, LICENSEE represents that it shall secure, prior to making attachments, any consents, permissions or licenses that may be legally required by any television broadcasting company or others by reason of LICENSEE pickup, transmission and furnishing of program material to its customers, or by reason of other operations of LICENSEE hereunder.

502. Compliance with NESC Codes and Agency Orders. LICENSEE at its own cost, shall construct and maintain its attachments on the poles in accordance with the requirements of the latest edition of the NESC and any amendments or revisions of that code, and in compliance with any rules or orders now in effect or hereafter issued by the PSC, or other authority having jurisdiction.

503. Compliance with Edison Specifications. LICENSEE attachments shall be constructed in accordance with Edison Specifications EO-14060B and EO-16286C, as they may be revised from time to time by Edison.

504. Construction Period: Reports and Correction of Substandard Work. During construction of its facilities, LICENSEE shall report periodically to Edison on the exact locations where its plant has been and is being installed. Upon notice from Edison, LICENSEE shall correct any of its substandard installations on a new line within 60 days.

505. Post-Construction Period: Maintenance. LICENSEE shall, at its own cost and expense, maintain all of its attachments in safe condition and in thorough repair and shall, upon notification by Edison, correct any substandard conditions within 60 days. All tree trimming necessitated by the facilities of LICENSEE shall be done by it at its sole cost.

506. Protection of Facilities. The parties shall exercise special precautions to avoid damage to each other's facilities or those of NYT or other licensees, and each hereby assumes full

responsibility for any and all loss from such damage, caused by the acts, omissions or facilities of its agents. Each shall make an immediate report to the other of the occurrence of any damage and shall reimburse the appropriate owner of facilities for any expenses incurred in making repairs.

507. Changes in LICENSEE Attachments. LICENSEE shall not make additions to, or changes in the location of, its attachments without the prior written consent of Edison, except in the case of emergency or due to the requirement to continue service to the public. In such cases, work shall be performed in conformity with Sections 502 and 503, and Edison shall be notified immediately.

508. Inspections: No effect on Liability. Edison may inspect LICENSEE plant, as conditions may warrant, and as provided in Sections 404 and 405. The inspections shall not relieve LICENSEE of any obligation or liability under this Agreement.

509. No Liability for Interruption. Neither Edison nor NYT shall be liable to LICENSEE or to LICENSEE's customers (and LICENSEE hereby indemnifies, protects and saves harmless Edison and NYT against any such claim by LICENSEE's customers) for any interruption to LICENSEE's service or for interference with the operation of LICENSEE's facilities, from any cause, or for any other damage suffered by LICENSEE or its customers, whether or not the interruption, interference or damage is caused by the negligence or misconduct of Edison, NYT or their agents. LICENSEE waives any claim for consequential damages or lost profits.

510. Existing Attachments. If LICENSEE maintains any existing attachments on the poles covered by this Agreement, it shall reconstruct, adjust or replace all such attachments in conformity with the technical standards and specifications set forth in this Article V and, as soon as practicable, shall ensure that all existing plant shall conform to such standards. LICENSEE further agrees that applications for permission to maintain any existing attachments, not previously licensed by Edison, shall be made forthwith in accordance with the terms and conditions of this Article and Article III.

#### ARTICLE VI TERM OF AGREEMENT, CANCELLATION, RELOCATION AND REVOCATION

601. Ten Year Term. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of ten years and shall remain in effect thereafter unless it shall have been terminated on 90 days' written notice.

602. Termination For Inactivity. If no license is applied for within one year of today or no license is issued within two years



of today, then Edison shall have the option of terminating this Agreement, effective 30 days after mailing of notice.

603. Right to Give Up License. LICENSEE may give up any license by removing the attachment upon ten days' notice. Rental for the attachment shall be prorated for the half-year period in which the notice is given.

604. Termination for Unlawful Act. Notwithstanding the provisions of Section 601, this Agreement shall be subject to termination by Edison upon 90 days' written notice, upon any final regulatory or judicial determination that LICENSEE's facilities have been used in violation of any law or in aid of any unlawful act.

605. (a) Costs of Modifications to LICENSEE's Facilities: Over Two Years. If Edison shall determine, two years or more after the granting of any license (or, in the case of a hazardous condition, at any time after the granting of the license), that the service needs of Edison, NYT or any prior licensee or any hazardous or improper condition require the removal or modification of LICENSEE's plant ("Modification Work"), LICENSEE shall make such changes at its own expense within 30 days after notice or within such shorter period as may be feasible in the case of any hazardous condition.

(b) Costs of Later Make Ready Work: Over Two Years. If Edison shall determine, two years or more after the granting of any license (or, in the case of a hazardous condition, at any time after the granting of the license), that the service needs of Edison, NYT or any prior licensee or any hazardous or improper condition require modifications in the plant of Edison, NYT or any prior licensee, including without limitation the replacement of a pole, and if the modifications would not be necessary except for the presence of LICENSEE's facilities, the modifications shall be additional Make Ready Work under this Agreement. LICENSEE shall pay for the additional Make Ready Work in accordance with the provisions of Article III; provided, however, that, if LICENSEE terminates the applicable license, as provided in Section 603, at least 48 hours prior to the scheduled time for the additional Make Ready Work, it shall avoid liability for said Make Ready Work.

(c) Costs of Modification Work or Additional Make Ready Work: Under Two Years. Any Modification Work or additional Make Ready Work within two years of the date of license, necessitated by changes in the service needs of Edison, NYT or any prior licensee, will be paid for by the person whose service needs caused the work.

(d) Waiver of Two Year Limitation. Edison shall have the right in good faith to determine, at the time application is made for a license, that its service needs will require Modification Work, additional Make Ready Work or both, on the pole

in question within two years after the date scheduled for granting the license for the initial attachment. In that case, the parties will try to accommodate each other, either by advancing the date for Edison's proposed work on the pole or by rescheduling LICENSEE's use of the pole. If these solutions are impracticable, the granting of a license may be conditioned on LICENSEE's waiver of the two-year limitation of Subdivision (c) of this Section 605.

(e) Subsequent Licensees. The cost of additional Make Ready Work stemming from the activities of persons licensed subsequent to LICENSEE is not the responsibility of LICENSEE but is to be borne by the subsequent licensee.

(f) Acts of God. When additional Make Ready Work or related work is required as the result of circumstances beyond anyone's control, including but not limited to storms, vehicular accidents, or public work projects, LICENSEE is responsible for the timely repair, relocation or replacement of its own facilities and for the costs incurred by Con Edison, NYT or any prior licensee for the additional Make Ready Work resulting solely from the existence of LICENSEE's attachments.

606. Noncompliance. If LICENSEE fails strictly to comply with any lawful request made by Edison under this Article VI, Edison shall have the option, on 30 days' written demand for compliance (or, in the case of a hazardous situation, on such shorter notice as seems practical to Edison in the circumstances), to cancel LICENSEE's license for any attachment affected by LICENSEE's failure to comply.

607. Forbidden Installation. Upon a final regulatory or judicial determination that LICENSEE's use of any particular pole is forbidden, the license to attach to the pole shall immediately be cancelled, and LICENSEE shall remove its attachments immediately.

## ARTICLE VII LIABILITY AND INSURANCE

701. Indemnity. LICENSEE hereby indemnifies, protects and saves harmless Edison and NYT from and against any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages to property or injury to or death of persons, including the officers, agents, and employees of either party hereto and of NYT, including payment under the Workers' Compensation Law or under any plan for employees' disability and death benefits, which arises out of or is caused by the erection, maintenance, presence, use or removal of LICENSEE's attachments or by the proximity of the cables, wires, apparatus and appliances of LICENSEE to those of Edison or of NYT, arising out of any act or omission of LICENSEE including any claims and demands of customers



of LICENSEE or others, and irrespective of any fault, failure, negligence or alleged negligence on the part of Edison or of NYT.

702. (a) Insurance: Named Insureds. LICENSEE shall carry insurance at its sole cost and expense to protect the parties hereto and NYT, by naming each as an additional insured, in respect of LICENSEE's liability for indemnification under Sections 506, 509 and 701.

(b) Insurance: Coverages. The amount of the insurance shall be, as to property damage, no less than \$1,000,000 per occurrence with no aggregate limitation and, as to personal injury or death, no less than \$1,000,000 per person injured or killed with no aggregate limitation.

(c) Insurance: Term. The insurance shall remain in force for the life of this Agreement and shall be with a company or companies satisfactory to Edison. Edison's approval shall not be unreasonably withheld.

(d) Insurance: Cancellation and Evidence. The insurance shall provide that policies may not be cancelled or materially changed except upon 30 days' notice to Edison. LICENSEE shall furnish evidence of insurance to Edison before this Agreement is effective.

703. Notification of Claims. LICENSEE shall promptly advise Edison's Claim Agent of all claims relating to damage to property or injury to or death of persons, arising or alleged to have arisen in any manner by, or directly or indirectly associated with, the erection, maintenance, presence, use or removal of LICENSEE's equipment. Copies of all accident or other reports made to any insurer by LICENSEE shall be furnished to Edison's Claim Agent, Room 1820, 4 Irving Place, New York, New York 10003.

704. In all instances in which LICENSEE is obligated to indemnify and save harmless Edison and/or NYT ("Indemnatee"), and if LICENSEE is not in default of that obligation, LICENSEE's obligation is conditioned upon (i) the Indemnatee's giving LICENSEE written notice of all claims, damages, losses, suits and any other event which in any way relate to or will be asserted by Indemnatee as a basis for the obligation, (ii) Indemnatee's furnishing such available information and assistance in the disposition of the matter as may be reasonably requested by LICENSEE and (iii) no settlement or other disposition being made by any Indemnatee of any matter for which a claim of indemnification or to be saved harmless will be made, without the prior written consent of LICENSEE.

ARTICLE VIII  
SECURITY AND REMEDIES ON DEFAULT

801. Security. LICENSEE shall furnish security to Edison for performance of LICENSEE's obligations to make any and all payments demanded by Edison as due under this Agreement, including, without limitation, rentals in respect of licenses and costs of Make Ready Work or removal of LICENSEE's plant. At LICENSEE's option, the security may be either a letter of credit or a bond, as provided in Sections 802 and 803. The security in either case shall be in the amount of \$15 per attachment for licenses under this Agreement, to be furnished prior to the granting of the licenses. The initial amount of security shall be at least \$1,500 (100 poles) and, as each additional 100 poles are licensed, shall be increased in \$1,500 increments. Similarly, the amount of security shall be decreased by \$1,500 for each decline of 100 in the total number of poles licensed to LICENSEE. Upon LICENSEE's completion of two years (four semiannual payments) of satisfactory payment of pole rentals, this security requirement shall be terminated. Con Edison may reinstitute this security requirement, if LICENSEE shall have been late in paying any pole rental obligation or defaulted in any of its other obligations under this Agreement.

802. (a) Letter of Credit. If LICENSEE furnishes a letter of credit pursuant to Section 801, the letter of credit shall be issued by a bank having an office for the transaction of banking business in New York City or Westchester County. The form of the letter of credit must be satisfactory to Edison. The letter of credit shall be held during the continuance of this Agreement as security for any and all amounts that may become due to Edison hereunder.

(b) Rights of Edison. If LICENSEE shall fail to pay any sum demanded by Edison as due under this Agreement, Edison shall have the right forthwith to apply to the bank for any or all amounts in payment of the sum due, whether or not LICENSEE contests its liability to pay the sum and whether or not Edison exercises or has exercised any option it may have to terminate the Agreement.

(c) Reinstitution of Letter of Credit. LICENSEE shall fully reinstitute its letter of credit within thirty days after notice that Con Edison has applied to the bank for payment under an existing letter of credit, whether or not LICENSEE contests its liability by legal proceedings or otherwise. Failure to reinstitute its letter of credit shall constitute a default.

803. (a) Bond. If LICENSEE furnishes a bond pursuant to Section 801, the surety shall be an insurance company licensed to do business in New York State, and the form of bond must be satisfactory to Edison. The initial bond and any renewals or replacements thereof shall each be for a term of not less than one year. Proof shall be provided to ensure that replacement or

renewal bonds shall be continuous.

(b) Rights of Edison. The bond shall provide that the surety will pay to Edison within the dollar limits of the bond any sum demanded by Edison as due under this Agreement, whether or not LICENSEE contests its liability to pay the sum and whether or not Edison exercises or has exercised any option it may have to terminate the Agreement.

(c) Renewal After Payment. If any amounts are paid by the surety, LICENSEE shall restore the bond to the full amount required under Section 801 within thirty days after notice of payment is sent to LICENSEE whether or not LICENSEE contests its liability by legal proceedings or otherwise. Failure to restore the bond shall constitute a default.

804. Remedies of LICENSEE If LICENSEE contests its liability to pay any sum, its only remedies shall be to petition the PSC or to bring an action at law against Con Edison to recover the amounts claimed to have been erroneously applied by the issuing bank or the surety.

805. Failure to Maintain Security. If LICENSEE shall fail to pay any sum due under this Agreement, or shall fail to maintain the letter of credit or the bond as provided in Sections 801 through 804, Edison upon written notice to LICENSEE shall have the right to terminate the Agreement upon 15 days notice to cure and, if payment shall not have been made, the termination shall be effective five days after the expiration of the 15-day period.

806. Default in General. In addition to the right provided by Section 805 and to Edison's termination rights provided for elsewhere in this Agreement, if LICENSEE shall default in any other respect in performing any action required under this Agreement, Edison shall have the right to terminate the Agreement or to cancel any particular license affected, and the termination or cancellation shall be effective upon the expiration of 30 days after notice to LICENSEE provided that the default has not been cleared within that time. Termination of this Agreement shall not release LICENSEE from any liability or obligation to continue to pay rentals at the rates provided in Article IV for such time as LICENSEE's attachments remain on the poles or from the obligation to pay any costs of removal.

807. Removal After Termination or Cancellation. Upon termination of this Agreement, or cancellation of any licenses, LICENSEE shall remove its attachments within 90 days (or, in the case of a hazardous situation, within such shorter periods as seems practical to Edison in the circumstances) after the effective date of termination or cancellation or such shorter period as is herein otherwise provided.



808. (a) Failure to Remove Attachment. If, within any time period herein provided, LICENSEE shall fail to make a change in its plant required by Edison or shall fail to remove any attachments upon cancellation of any license or upon termination of this Agreement, Edison shall have the right to make the changes or effect the removals. In case of emergency or service needs of Edison or NYT, Edison or NYT may perform the work without written notice to LICENSEE or upon such other notice as Edison or NYT deems reasonable in the circumstances.

(b) Costs of Removal. LICENSEE shall pay, within 30 days of billing, all the costs of removal performed by Edison or NYT.

(c) Disposition of Equipment. If Edison removes any of LICENSEE's equipment pursuant to this Section 808, Edison may hold the equipment as security for the payment of any sums due under this Agreement, sell the equipment at public or private sale upon notice to LICENSEE, turn the equipment over to LICENSEE or do any combination of these things. If Edison sells any of LICENSEE's equipment, it shall apply the proceeds to pay sums due under this Agreement and shall pay any balance to LICENSEE.

809. PSC Review. Prior to terminating this Agreement or cancelling any license for whatever cause or purpose, a petition may be brought by either party to the PSC requesting a PSC decision, which shall be binding on both parties. If termination or cancellation is based upon a safety hazard, an emergency or an illegal condition that puts Edison at any risk, Edison may remove LICENSEE's facilities pending the PSC's determination. If the PSC requires restoration of the removed facilities, the costs shall be Edison's.

#### ARTICLE IX SPECIAL PROVISIONS

901. (a) Edison's Use Primary. Any license granted to LICENSEE is at all times subordinate to Edison's statutory duty to supply uninterrupted electric service to its consumers.

(b) Rights of Edison. Notwithstanding any contradictory provision, if at any time in the sole judgment of Edison its ability to fulfill its statutory public service duty may be threatened by reason of LICENSEE attachments or of this Agreement, LICENSEE shall forthwith comply with any request of Edison promptly to remove or alter its attachments, or other condition, that so threaten Edison's ability.

(c) Edison's Remedy. If LICENSEE shall fail promptly to comply with any request made pursuant to this Section 901, Edison shall have the right to cancel any license or to terminate this Agreement, effective immediately upon mailing of the notice.

902. (a) Maintenance of 24-Hour Emergency Services. LICENSEE shall maintain fully available on a 24-hour basis complete and adequate emergency services, consisting of appropriate equipment and trained personnel sufficient to assure a prompt response to requests or directions by Edison that LICENSEE's equipment be immediately removed or adjusted to accommodate any emergency conditions that may arise.

(b) Edison's Remedy. If, in the sole judgment of Edison, LICENSEE shall fail properly to maintain emergency services as provided herein, its failure shall constitute a default under this Agreement, and Edison upon written notice to LICENSEE shall have the right to cancel any license or to terminate this Agreement, effective immediately upon mailing of the notice.

903. (a) High Voltage: Warning. LICENSEE warrants and represents to Edison that it shall specifically and adequately warn all field personnel of the dangers inherent in electrical conductors before any personnel are permitted to perform any work near any Edison facilities. The warning shall be given to LICENSEE field personnel both orally and in writing. The written warning shall be prepared in duplicate, with one copy retained by LICENSEE and the other by LICENSEE's field personnel, acknowledging receipt of both written and oral warnings. The written warning shall be made available for inspection by Edison at any time inspection may be requested.

(b) Edison's Remedy. If LICENSEE does not satisfy Edison, in its sole judgment, of its compliance with this Section 903, its failure will constitute a default, and Edison may at its sole option cancel any license or terminate this Agreement, effective immediately upon mailing of the notice.

904. Anchor and Guys. LICENSEE may attach its guys to Edison's anchors under the following conditions:

(a) Each application under Section 301 for a licensed attachment shall also specify the anchor(s) to which LICENSEE wishes to attach. If the anchor has sufficient capacity, Edison shall authorize the attachment.

(b) The determination of whether an Edison anchor has sufficient capacity to permit the attachment of LICENSEE's guy(s) shall be made, as part of the study of Make Ready Work, solely by Edison or by NYT. Edison's permission to attach to an anchor will be subject to Edison's normal operating practices and will not be unreasonably withheld.

(c) Con Edison is under no obligation to install new anchors or to replace existing anchors in order to accommodate LICENSEE's attachments.

(d) No rental shall be charged to LICENSEE for any attachment it makes pursuant to this Section 904, subject however to any determination hereinafter made, by the PSC or by other governmental body having jurisdiction, that may require Edison to charge rental for attachments to anchors, or that may, as a practical matter, bar Edison from including its anchor costs in its pole investment for the purpose of the calculation of pole attachment charges.

(e) Upon request by Edison, LICENSEE shall promptly remove from Edison anchors any attachments that have not been authorized pursuant to this Section 904.

(f) Any failure to remove an attachment, as required by Subdivision (e) of this Section 904, shall constitute a default, and Edison may at its sole option cancel any license or terminate this Agreement.

#### ARTICLE X GENERAL PROVISIONS

1001. No Assignment by LICENSEE. LICENSEE shall not assign this Agreement without Edison's written consent, granting of which shall not be unreasonably withheld. Subject to the foregoing, however, this Agreement shall extend to and bind the successors and assigns of the parties.

1002. No Waiver. Failure to enforce or insist upon compliance with any of the terms of this Agreement shall not constitute a waiver of any of the terms, which shall remain at all times in full force and effect.

1003. Merger. This Agreement constitutes the entire agreement between the parties, and it may not be modified or amended, nor may any obligation of either party be changed or discharged, except in writing signed by the duly authorized officer or agent of the party to be charged.

1004. Waiver of Jury Trial. Edison and LICENSEE each hereby waive any right to a trial by jury in any litigation arising out of this Agreement or out of LICENSEE's use of space on Edison's poles.

1005. Notice. Any notice to Edison shall be delivered by hand or by certified mail to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, New York 10003  
Attn: John A. Arceri, Asst. Vice President

Any notice to LICENSEE shall be delivered by hand or by

certified mail to:

Teleport Communications New York  
One Teleport Drive  
Staten Island, New York 10311

Any notice shall be effective immediately upon receipt except where provided otherwise herein.

1006. New York Law. This Agreement shall be governed by the laws of New York.

1007. Captions Not Part of Agreement. The captions in this Agreement are not part of the Agreement. They are intended only to facilitate references to the provisions. They in no way affect, limit or cast light on the interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By: John A. Arceri

John A. Arceri  
Asst. Vice President

Attest:

Robert A. [Signature]  
Assistant Secretary

TELEPORT COMMUNICATIONS NEW YORK

By: Stuart A. [Signature]

Title: Senior Vice President

Attest:

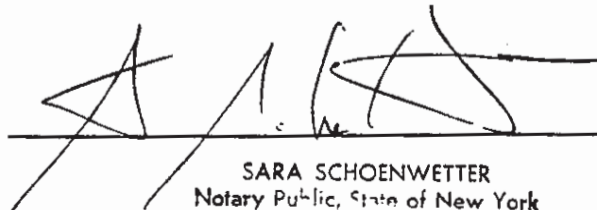
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STATE OF NEW YORK )

COUNTY OF NEW YORK ) ss.:

On the 26<sup>th</sup> day of May, 1993, before me personally came John A. Arceri to me known, who, being by me duly sworn, did depose and say that he resides at 10 Ross Road, Scarsdale, N.Y. 10583; that he is an Assistant Vice President of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is said corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that he signed his name thereto by like order.

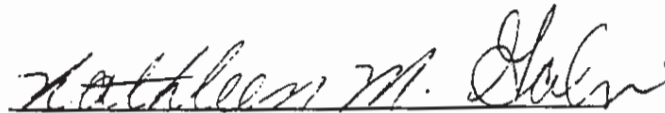


SARA SCHOENWETTER  
Notary Public, State of New York  
No. 41-469075  
Qualified in Queens County  
Commission Expires September 30, 1993

STATE OF NEW YORK )

COUNTY OF New York ) ss.:

On the 13<sup>th</sup> day of May, 1993, before me personally came Stuart Mencher to me known, who, being by me duly sworn, did depose and say that he resides at \_\_\_\_\_; that he is a Senior Vice President of Teleport Communications New York, the partnership described in and which executed the foregoing instrument; and that the execution of said instrument has been authorized by appropriate action of the partnership.



KATHLEEN M. GALVIN  
Notary Public, State of New York  
No. 24-4958175  
Qualified in Kings County  
Commission Expires September 11, 93



# Corporate Restructuring Approval

Filed: Session of April 24, 2014  
Approved as Recommended  
and so Ordered  
By the Commission

*Kathleen H. Burgess*

Digitally Signed by Secretary  
New York Public Service Commission

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KATHLEEN H. BURGESS  
SECRETARY

Issued & Effective April 24, 2014

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

April 1, 2014

TO: THE COMMISSION

FROM: Office of Telecommunications

SUBJECT: CASE 14-C-0093 - Joint Petition of Teleport  
Communications New York and TC Systems, Inc. for  
expedited approval of authority to complete corporate  
restructuring.

SUMMARY OF

RECOMMENDATION: Staff recommends that approval be granted,  
pursuant to Section 99 of the Public Service  
Law, for Teleport Communications New York and  
TC Systems, Inc. to complete an internal  
corporate restructuring.

SUMMARY

By joint petition dated March 12, 2014, pursuant  
Section 99 of the Public Service Law, Teleport Communications  
New York and TC Systems, Inc. request approval to complete an  
internal corporate restructuring on or before May 30, 2014. The  
associated transactions will be transparent to New York  
customers and Staff recommends Commission approval.

BACKGROUND

Teleport Communications New York is a wholly owned  
subsidiary of Teleport Communications Group, Inc., which in turn  
is a wholly-owned subsidiary of AT&T Corp. Teleport  
Communications New York is authorized to provide inter-tenant

calling capabilities, resold services, as well as inter- and intra-LATA intra-city private line services pursuant to Certificates of Public Convenience and Necessity (CPCN) granted by the Commission in Case 29361 on January 14, 1987 and Case 28891 on June 17, 1986, and January 7, 1985, respectively.

TC Systems, Inc. is a wholly-owned subsidiary of Teleport Communications Group, Inc., which in turn is a wholly-owned subsidiary of AT&T Corp. TC Systems, Inc. is authorized to provide all forms of telephone service on an intra-LATA, intra-city basis, pursuant to a CPCN granted by the Commission in Case 91-C-0702 on March 17, 1992, and all forms of telephone services as a reseller via landline telephone company or other common carrier facilities, pursuant to a CPCN issued by the Commission in Case 90-C-0220 on May 25, 1990.

TC New York Holdings I, Inc. and TC Holdings II, Inc. are holding companies that do not provide telecommunications services in New York. Teleport Communications America, LLC is the United States operating entity for AT&T's "TCG" affiliates. The corporate address for all of the entities in the proposed transaction is One AT&T Way, Bedminster, NJ 07921.

#### PROPOSED TRANSACTION

In a series of transactions to reorganize and simplify AT&T's internal corporate structure, Teleport Communications New York and TC Systems, Inc., the two New York regulated affiliates of AT&T Corp. involved in the transaction, request that the Commission approve an internal corporate reorganization and consolidation of certain corporate entities, pursuant to Section 99 of the New York State Public Service law.

Under the proposed transaction, TCG New York, Inc. will merge into Teleport Communications America, LLC. Two other entities, TC New York Holdings I, Inc. and TC New York Holdings II, Inc., will be converted to limited liability companies.

Next, TC New York Holdings I, LLC, TC New York Holdings II, LLC, and Teleport Communications New York will all merge into Teleport Communications America, LLC. In the final step of the transaction, Teleport Communications America, LLC will transfer the assets obtained from the Teleport Communications New York merger to TC Systems, Inc. Teleport Communications New York will request cancellation of its CPCN following the merger.<sup>1</sup>

The transactions are expected to close by May 30, 2014; therefore and the petitioners have requested expedited Commission approval. Attachment A details the proposed transactions for corporate restructuring.

#### DISCUSSION

The petitioners represent that the proposed transactions will simplify AT&T's existing internal corporate structure, which will, in turn, reduce administrative costs and enable the company to manage its business operations more efficiently. Thus, the proposed internal corporate restructuring will benefit consumers and enable the petitioners to compete more effectively in the marketplace. The petitioners further represent that the reorganization is entirely a matter of internal corporate management, and will have no effect on the services provided to Teleport Communications New York and TC Systems, Inc. customers; existing rates and services will not be affected and the overall management of the companies' service offerings will remain unchanged.

AT&T has notified the New York City Department of Information Technology and Telecommunications (NYC DoITT) of the

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<sup>1</sup> After the transaction, TC Systems, Inc. will adopt, in their entirety, the tariffs of Teleport Communications New York.

proposed transaction pursuant to AT&T's New York City franchise agreement. NYC DoITT has reviewed the proposed transaction and has determined that the reorganization contemplated is permissible, and is therefore not subject to further review.<sup>2</sup>

Under Section 92-e(2) of the Public Service Law (PSL), no telephone company is permitted to change a customer's preferred carrier unless it has complied with the authorization and confirmation procedures established by the Commission and by federal law and rules. Since there are no separate Commission authorization and confirmation procedures, compliance with the Federal Communications Commission (FCC) rule, 47 C.F.R. §64.1120(e), satisfies the requirements of PSL §92-e(2). The petition explains that customer notice is not required under FCC rules because this is an internal corporate restructuring. Staff concurs that no customer notice is needed to comply with 47 C.F.R. §64.1120(e) and, therefore, the requirements of PSL §92-e(2) are satisfied.

#### CONCLUSION

Based on Staff's analysis and the representations made in the petition, the proposed corporate restructuring is in the public interest. TC Systems, Inc. will need to file the necessary tariff cancellation supplement after closing the transaction, in accordance with Commission rules.

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<sup>2</sup> See Petition, Attachment B.

RECOMMENDATION

It is recommended that:

1. The Joint Petition of Teleport Communications New York and TC Systems, Inc. for expedited authority to complete corporate restructuring be approved.
2. The Teleport Communications New York, Certificate of Public Convenience and Necessity be cancelled, upon the filing of a tariff adoption supplement with the Secretary to the Commission within one month after the closing of the transaction.
3. The case be closed upon compliance with the requirement to file a tariff adoption supplement in Clause 2.

Respectfully submitted,

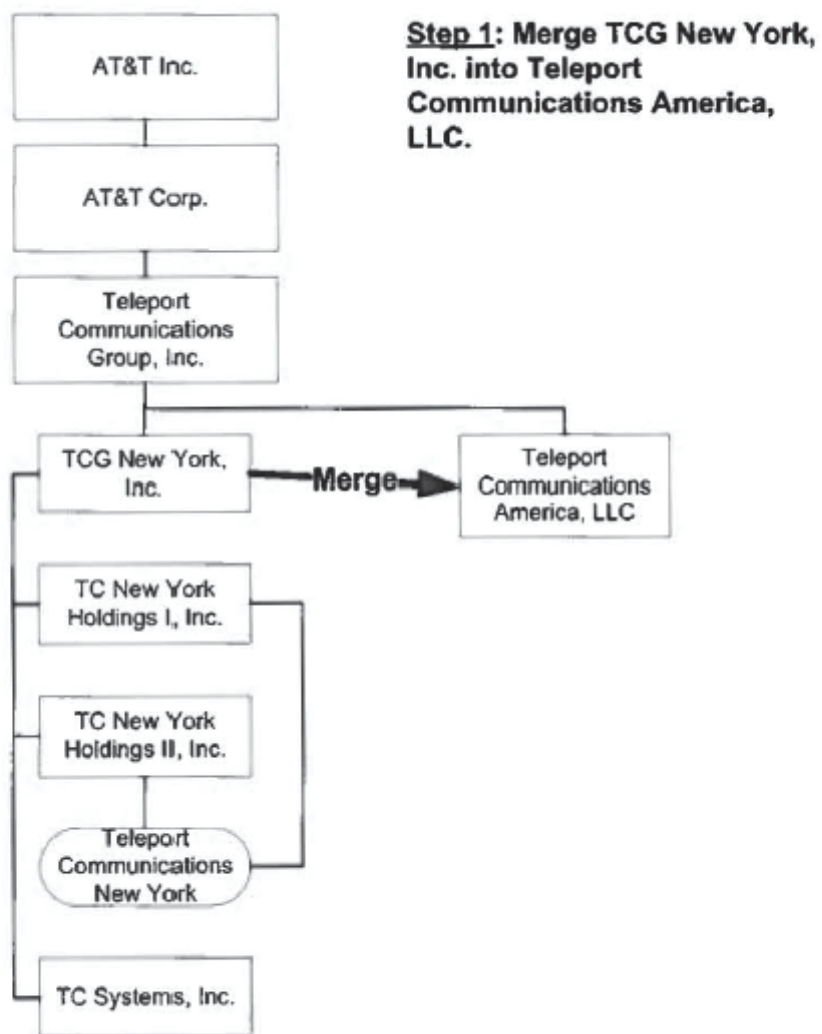
GUY E. LOUNSBURY  
Utility Analyst III  
Office of Telecommunications

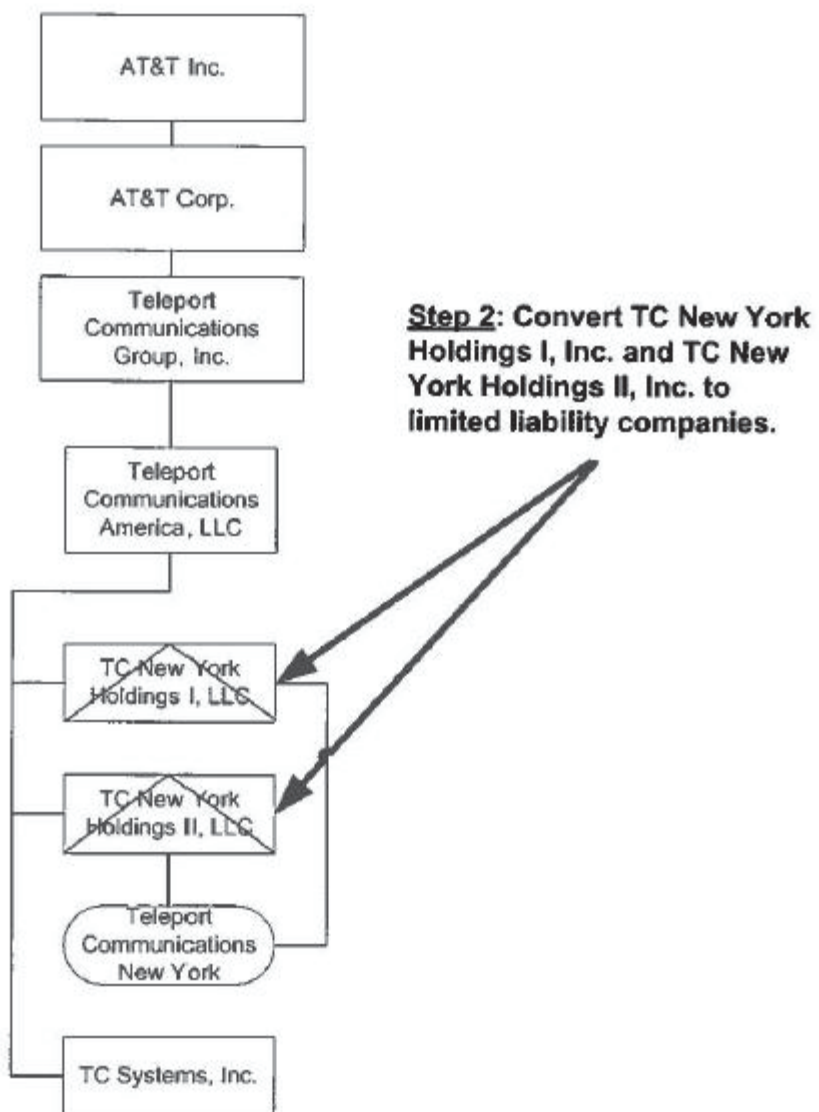
Reviewed by,

GRAHAM JESMER  
Assistant Counsel  
Office of General Counsel

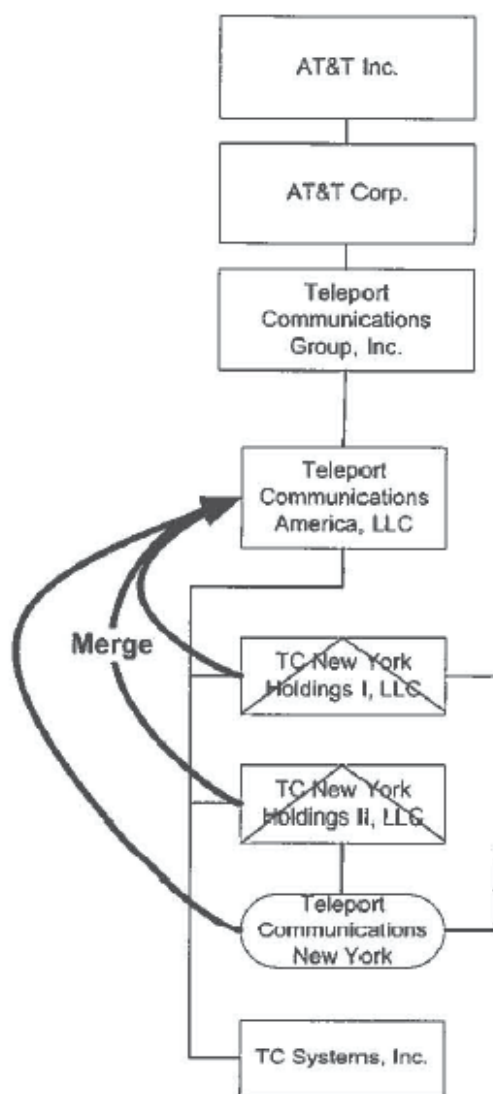
APPROVED:

RUVAİN KUDAN  
Utility Supervisor  
Office of Telecommunications

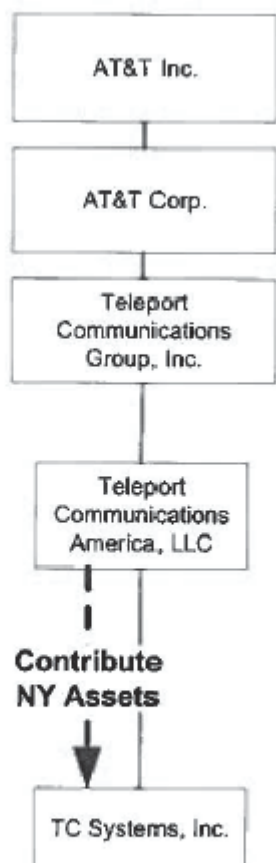
ATTACHMENT A



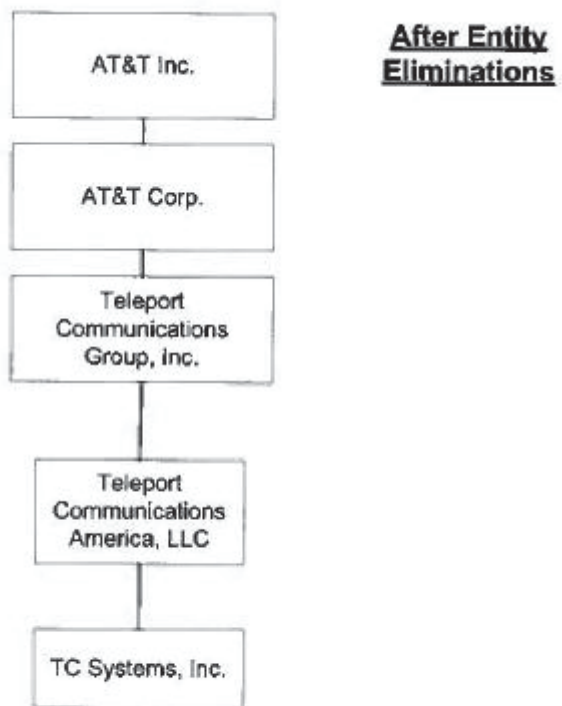




**Step 3:** Merge TC New York Holdings I, LLC, TC New York Holdings II, LLC, and Teleport Communications New York into Teleport Communications America, LLC.



**Step 4: Teleport Communications America, LLC contributes NY assets, obtained from the Teleport Communications New York Merger in Step 3, to TC Systems, Inc.**



**NYC**  
**Information**  
**Technology &**  
**Telecommunications**

**Rahul M. Merchant**  
*Chief Information and Innovation Officer*  
75 Park Plaza  
New York, NY 10007  
212-788-6600

December 10, 2013

Mary Burgess  
AT&T  
Legal Department  
111 Washington Avenue Suite 706  
Albany, New York 12210

*Re: Review of petition of AT&T for proposed internal reorganization*

Dear Ms. Burgess:

The Department of Information Technology and Telecommunications, ("DoITT") has reviewed the above-referenced petition, dated November 21, 2013, and has determined that the reorganization contemplated by AT&T involving the Teleport franchise would be permissible under Sections 9.1, 9.2 and Appendix G, Section II, Subsection 1 of the franchise agreement and is therefore subject to no further review by DoITT. DoITT has made this determination based on facts asserted by AT&T in its November 21, 2013 petition which states that the new franchisee, TC Systems, Inc., will be a wholly owned subsidiary of Teleport Communications Group, Inc. and that the proposed transaction would keep all ownership within the same ultimate AT&T control structure that the franchise has been under since the Franchise and Concession Review Committee approved a change in control of the franchise to AT&T in 1998 and that the transaction described in AT&T's petition is entirely a matter of internal corporate reorganization under the same corporate management. Additionally, AT&T has asserted that the transaction does not change the actual working control of the franchisee or its operation. Should updated VENDEX forms become necessary for the franchisee due to this internal reorganization, then AT&T should send any required VENDEX forms and information to the Mayor's Office of Contract Services and copy DoITT.

Sincerely,



Stanley Shup  
Assistant Commissioner, Franchise Administration

cc: Tanessa Cabo  
Perer Schwab  
Bruce Regal

## **RIGHT-OF-WAY & CORRIDOR AGREEMENT**

This RIGHT-OF-WAY and CORRIDOR AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 ("Agreement") by and between the City of Rye ("the City") whose executive office is located at 1051 Boston Post Road, Rye, New York 10580 and TC Systems, Inc. ("the Company"), having its principal office at One AT&T Way, Bedminster, NJ 07921;

WHEREAS, the New York State Public Service Commission granted the Company's Petition(s) for a "Certificate of Public Convenience and Necessity," thereby establishing it as a state-franchised public utility;

WHEREAS, the Company is a wholly-owned subsidiary of AT&T Inc.;

WHEREAS, the Company has requested permission from the City to utilize public rights-of-way within the geographic boundaries of the City, to construct, maintain and operate fiber optic cable and related necessary equipment, that may include, inter alia, splices to accommodate future expansion of the network, which will be located on utility poles upon, along and across the streets and public places within the limits of the City, as well as underground where necessary;

WHEREAS, the actions contemplated by this Agreement are Type II actions not subject to review under the State Environmental Quality Review Act ("SEQRA")(See NYCRR § 617.5(c)(7));

NOW, therefore, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Grant:**

a. The City hereby grants to the Company and its successors and assigns to the extent it has the authority to do so, the non-exclusive right and privilege to construct, maintain and operate fiber optic cable and related necessary equipment that may include, inter alia, splices to accommodate future expansion of the network, which will be located on utility poles upon, along and across the streets and public places within the limits of the City, or underground where necessary and possible (the "Facilities"), as shall be determined under Section 2 of this Agreement. Said right is granted pursuant to the City's authority set forth in Section 27 of the New York State Transportation Corporations Law and Section 253 of the Federal Telecommunications Act of 1996.

b. The City reserves all rights to grant other permission for the use of any present and future streets, sidewalks, alleys, utility easements, public rights-of-way, public lands and buildings, and all other public places, to any other person or entity during the term of this Agreement, provided such additional use does not prevent or materially interfere with the operation of the Company's Facilities.

c. This Agreement is not a franchise to provide cable television to residents or business within the City. Any future franchise agreement to provide cable television services to the community would have to be approved by the City and subject to separate agreement(s).

d. This Agreement shall not permit the Company to install or otherwise deploy small wireless facilities ("small cells"). Any small cell installations to provide wireless services to the community would have to be approved by the City and subject to separate agreement(s).

e. The Company shall comply with the applicable provisions of Section 600 of the New York State Real Property Tax Law, and agrees to waive the tax credits available under Section 626 of the New York Real Property Tax Law. The Company shall be responsible for all taxes, assessments and impositions of any taxing entity resulting from the Company's activities pursuant to this Agreement.

## **2. Location of Construction:**

The Company's Facilities shall be installed on new, replacement or existing utility poles so as not to interfere with traffic on streets, except during construction and maintenance of the Facilities. In the event that work conducted by the Company required the Company to direct traffic, the Company agrees to utilize off-duty City police officers to the extent such assistance is required by the City. The parties agree to an initial route, as depicted on Exhibit A. All future locations of the Company's fiber optic network in new, existing or replacement underground conduits or on new, existing or replacement above ground utility poles in, upon, along, across, above, in and under the streets and public places within the limits of the City, shall be fixed with the prior written approval of the City's designee, which approval shall not be unreasonably withheld, and payment of any future reasonable fee as may be mutually acceptable and in compliance with State and Federal law. The Company shall have no vested right or interest in any such location, and without limitation of any kind whatsoever, the Facilities shall be removed and relocated by the Company whenever the same restrict or obstruct the construction, maintenance, operation or location or any future construction, maintenance, operation of said streets, public places or highways. If such removal or relocation as determined by the City is necessary, the City shall provide the Company with at least sixty (60) days prior written notice when possible; and in any case, as much written notice as shall be reasonably possible. In the event all occupants of overhead utility poles determine to place or are required to place their current aerial facilities underground in a particular location where the Company has similar aerial facilities, then upon sixty (60) days prior written notice from the City, the Company shall commence to do likewise at its own expense, and the grant provided under Section 1(a) hereof, shall be deemed to authorize such underground relocation, to the extent the City has authority to do so.

## **3. Consent of Utilities:**

The City hereby grants to the Company permission to attach or otherwise affix or install its Facilities, as described in Section 2 hereof, in, over or through facilities installed or maintained by any public utility company, on or over the portion of the streets of the City provided that the Company secures the written permission or consent, if necessary, of the aforementioned public utility companies together with any other permits or approvals as may be required by law. This shall not prohibit the erection of new poles as necessary.

**4. Term:**

The initial term of this Agreement shall be for a period of ten (10) years (“Initial Term”) from the Commencement Date (as defined herein). If the Company gives the City written notice of its intent to renew this Agreement at least ninety (90) days prior to the end of the term, the City and Company shall make a reasonable effort to negotiate the terms of such renewal in good faith and this Agreement shall continue in full force and effect which such negotiations are pending. The term Commencement Date means the date this Agreement is fully executed by the parties. The Company shall have the right to cancel this Agreement upon ninety (90) days prior written notice to the City. In the case of such termination, there shall be no refund of any portion of any payment made hereunder. Upon the expiration, non-renewal or earlier termination of this Agreement, the Company reserves the right to remove the Facilities, however, in the event the Company does not remove or abandons the Facilities, the City shall have the right: (i) to acquire the Facilities for fair market value or (ii) after thirty (30) days prior written notice to the Company, to direct the Company to remove the Facilities at its sole cost and expense.

**5. Compensation:**

In consideration of the rights granted hereunder, the Company shall pay the City a one-time fee of Ten Thousand (\$10,000.00) Dollars. The Company shall pay such fee upon execution of this Agreement by the City.

**6. Repair of Sidewalks and Streets:**

All streets and sidewalks disturbed or damaged in the construction, maintenance or removal of the Company’s Facilities and all other property damaged or destroyed by the Company shall be promptly repaired or replaced to its prior condition, reasonable wear and tear excepted, by the Company solely at its expense, in accordance with the City specifications. In the event of underground construction, the Company shall comply with the street opening laws of the City.

**7. Compliance with Applicable Laws:**

The Company and the City shall comply with all applicable laws, rules, regulations and codes of the local, state and federal governments and their regulatory agencies or commissions which are now or may hereafter be applicable to the operation authorized herein, including, without limitation, all ordinances now in force or that may hereafter be enacted, to the extent it complies with State and Federal law.

**8. Indemnification:**

a. The Company hereby agrees to indemnify, defend (with counsel acceptable to the City) and hold harmless the City and its officers and employees for and from any and all claims, allegations, losses, costs, expenses (including, but not limited to, reasonable legal fees and expenses) and other liabilities for which the City can or may be held liable as a result of any injury or death to any person or persons or as a result of any injury or damage to any property occurring directly by reason of or arising or alleged to have arisen out of the construction, operation, maintenance or removal of the Facilities

herein authorized. The City shall not be indemnified for acts of willful misconduct or ordinary negligence attributable to the City, its agents, employees or contractors.

b. The Company shall, prior to commencing any installation or other physical operation, file and maintain with the City throughout the term of this Agreement, a certificate of insurance evidencing commercial general liability insurance issued by a company acceptable to the City and authorized to do business in the State of New York with minimum limits of liability of \$1,000,000.00 on a combined single limit basis covering bodily injury including death and property damage for automobile liability in the same minimum amount and an umbrella policy totaling a minimum of \$5,000,000.00. The City shall be included as additional insured under the policies of insurance required hereunder. The Company agrees that it shall give the City thirty (30) days' notice prior to the cancellation, nonrenewal or material revision to the underlying insurance policies.

**9. Type of Equipment:**

a. The Company shall use materials of good and durable quality and all work involved in the construction, operation, maintenance and repair of the system shall be performed in a safe, thorough and reliable manner.

b. All technical specifications and the operation of the system shall at all times conform to the specifications, if any, established by the Federal Communications Commission, the New York State Public Service Commission or any successor thereto, as such exists presently or may exist in the future, without limitation of any kind whatsoever.

**10. Assignment:**

There shall be no assignment of any of the rights or privileges granted herein, without the prior written approval of the City, which shall not be unreasonably withheld. Notwithstanding the previous sentence, the Company may transfer any and all of its right and privileges hereunder to any entity under common majority ownership, management or control with the Company or to any purchaser of all or substantially all of the Company's assets, without the approval of the City. In such event all insurances, bonds and other sureties shall be so modified to remain in full force and effect. Within thirty (30) days of any assignments, the Company (or its successor) at all notify the City of the name, address and telephone number of the assignee.

**11. Termination of Agreement:**

a. In addition to all other rights reserved to the City under this Agreement, or by law, and not in substitution thereof, subject to Subsection (c) of this Section, the City reserves the right to terminate this Agreement, in its sole discretion, in the event that the Company shall be in default of or fail to comply with any material term, condition, requirement or limitation contained in this Agreement. In case of such termination, no refund will be made of any portion of any previously paid fee.

b. The Company shall not be deemed nor declared to be in default under any of the conditions, provisions, requirements or limitations if compliance with



same is prevented by reason of strikes, injunctions or other causes beyond the reasonable control of the Company.

c. The Company shall not be declared in default of any provision contained herein unless the Company shall have been given written notice by the City citing with particularity, the condition or act for which a violation is alleged. The Company shall have a period of thirty (30) days from receipt of such notice in which to refute, remedy or take reasonable steps to remedy such condition or act. Thereafter, a default may be declared by the City.

d. All notices hereunder should be sent by certified mail, return receipt requested to the Company at the address first noted above, Attention: Division Manager, Operations, with a copy to David R. McAtee II, Chief Counsel, AT&T Inc., One AT&T Way, Bedminster, NJ 07921 and to the City at the address first noted above, Attention: Greg Usry, City Manager, City of Rye, 10501 Boston Post Road, Rye, New York 10580.

**12. Severability:**

In the event that any provision of this Agreement, is held to be invalid by a court or regulatory agency of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect. If Section 1 and or Section 5 of this Agreement is found invalid, unenforceable, pre-empted or materially modified by subsequent legislation or regulation, the parties shall enter good faith negotiations to provide a lawful replacement for the provisions determined to be unlawful.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**CITY OF RYE**

**By:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Title:**\_\_\_\_\_

**TC SYSTEMS, INC.**

**By:**\_\_\_\_\_

**Name:**\_\_\_\_\_

**Title:**\_\_\_\_\_



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: June 2, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Resolution consenting to the re-appointment of Mr. Bart DiNardo to the Emergency Medical Services Committee as the City of Rye community representative.

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council approve the appointment.

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

## BACKGROUND:

The Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC). Section 3A of the Inter-Municipal Agreement, establishes community representatives from each of the participating municipalities be proposed by the Corps and ratified by each of the municipalities for a 3-year term.

See attached resolution proposing the community representative for the City of Rye from Kenny Barton, EMS Administrator .



## PORT CHESTER-RYE-RYE BROOK EMERGENCY MEDICAL SERVICES

6/1/2023

Mr. Greg Usry  
Rye City Manager  
City of Rye  
1051 Boston Post Road  
Rye, N.Y. 10580

Dear Mr. Usry:

The Inter-Municipal Agreement for Emergency Medical Services established the Emergency Medical Services Committee (EMSC). The current term of Mr. Bart DiNardo, the Community Representative to the Committee from the City of Rye will expire on June 30<sup>th</sup> 2023. Mr. DiNardo has been an active member of the EMSC and has expressed his desire to continue as Rye's representative.

Section 3A of the Inter-Municipal Agreement states that the community representative shall be "recommended by the Corps and ratified by joint resolution of the municipalities". In accordance with the agreement I respectfully submit Bart DiNardo for reappointment to the EMSC for a term of three (3) years, ending June 30, 2026. I request this matter be placed on the agenda of the next scheduled City of Rye Council meeting.

Please don't hesitate to contact me with any questions, comments or concerns.

Sincerely,

Kenny Barton  
EMS Administrator

## **RESOLUTION**

### **Considering the appointment of the City of Rye community representative to the Emergency Medical Services Committee**

WHEREAS, the Inter-Municipal Agreement between the Village of Rye Brook, City of Rye and Village of Port Chester for emergency medical services established the Emergency Medical Services Committee (EMSC); and

WHEREAS, the Port Chester-Rye-Rye Brook Emergency Medical Services is a not-for-profit corporation contracted by the three municipalities to provide emergency medical service and transportation that was that was formed in 1968 as a Voluntary Ambulance Corps. (Corps); and

WHEREAS, pursuant to Section 3A of the Inter-Municipal Agreement establishes community representatives from each of the participating municipalities to be proposed by the Corps and ratified by each of the municipalities; and

WHEREAS, in a letter dated June 1, 2023, from Kenny Barton, EMS Administrator, Mr. Bart DiNardo, has been recommended by the Corps as the community representative of the City of Rye;

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby approves the appointment of Mr. Bart DiNardo to the Emergency Medical Services Committee as the Community Representative of the Village of the City of Rye for a three (3) year term that begins on July 1, 2023 and ends June 20, 2026.



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: May 31, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Authorization for City Manager to enter into an Inter-municipal Agreement with Westchester County for the providing a Positive Youth Development Program for 2023 (Rye Youth Council).

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Mayor and Council authorize the City Manager to enter into the agreement.

RESOLVED the City Council authorizes the City Manager to enter into an Inter-municipal Agreement with Westchester County for the providing a Positive Youth Development Program for 2023 (Rye Youth Council).

**IMPACT:** ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

## BACKGROUND:

In an effort to encourage Municipalities to provide Positive Youth Development Programs, the County shall reimburse the City of Rye in an amount not to exceed \$2,600 to provide Youth Council Programs as described in the attached agreement.

The Agreement covers a one-year period between January 1, 2023 through September 30, 2023.

See attached documentation.

**INTERMUNICIPAL AGREEMENT**

**THIS INTER MUNICIPAL AGREEMENT** (“Agreement”), made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

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

**CITY OF RYE**, a municipal corporation of the State of New York, having an office and place of business at 21 Locust Avenue, Rye, New York 10580 (hereinafter referred to as the “Municipality”).

**WITNESSETH:**

**WHEREAS**, the County, acting by and through its Youth Bureau, desires that the Municipality provide a Positive Youth Development program entitled “Youth Educator” (the “Program”); and

**WHEREAS**, the Municipality is willing to provide such Program, upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the promises and the covenants and agreements herein contained, the parties hereto agree as follows:

**FIRST**: The Municipality shall provide the Program, as more fully described in Schedule “A” attached hereto and made a part hereof (the “Work”). In consideration for providing the Program, the County shall reimburse the Municipality an amount not to exceed Two Thousand Six Hundred Dollars (\$2,600), as budgeted in accordance with Schedule “B,” which is attached hereto and made a part hereof, payable quarterly, upon approval of the same as to form and manner by the Office of the Westchester County Attorney, and which amount shall be contingent upon receipt of said amount by the County from the New York State Office of Children and Family Services (“NYSOCFS”), for expenses actually incurred and paid by the Municipality after receipt of vouchers and/or reports in the manner prescribed by the County.

Payment under this Agreement shall be made after submission by the Municipality of an invoice, which shall be uniquely numbered, and paid only after approval of the invoice by the Commissioner. In no event shall payment be made to the Consultant prior to completion of all Work and the approval of same by the Commissioner.

Except as otherwise expressly stated in this Agreement, no payment shall be made by the County to the Municipality for out of pocket expenses or disbursements made in connection with the services rendered or the work to be performed hereunder.

**SECOND:** The Municipality shall provide the County with a report to be submitted within thirty (30) days of the expiration of this Agreement which shall set forth in detail the services performed under the Agreement, the activities, progress and accomplishments under the Agreement, the amount of funds expended for each task performed and the extent and manner in which the goals, objectives and standards established for the Agreement have been met by the Municipality. The above report shall be certified by an officer or director of the Municipality.

The County shall have the right, at its option and at its sole cost and expense, to audit such books and records of the Municipality as are reasonably pertinent to this Agreement to substantiate the basis for payment. The County may withhold payment of funds hereunder for cause found in the course of an audit or because of failure of the Municipality to cooperate with an audit. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one (1) year following termination of this Agreement, and to perform random audits during the term of this Agreement. In the event an audit performed by the County reflects overpayment by the County or that monies were not fully expended or that monies were improperly expended, then the Municipality shall reimburse to the County the cost of such audit (if the audit was done by the County or on the County's behalf) and the amount of such overpayment, underpayment or improper payment, within thirty (30) days of notice from the County.

The Municipality further agrees to permit designated employees or agents of the County reasonable on-site inspection of the work being performed by the Municipality under this Agreement, its books, accounts, financial audits and records and agrees to keep records necessary to disclose fully the receipt and disposition of funds received under this Agreement. Unless the County shall, in writing, advise the Municipality to the contrary, the Municipality shall retain all financial records

related to this Agreement for a period of ten years after the expiration or termination of this Agreement.

In no event shall final payment be made to the Municipality prior to completion of all services, the submission of reports and the approval of same by the County Executive or his duly authorized designee.

**THIRD:** The Municipality agrees to procure and maintain insurance naming the County as additional insured, as provided and described in Schedule "C," entitled "Standard Insurance Provisions," which is attached hereto and made a part hereof. In addition to, and not in limitation of the insurance provisions contained in Schedule "C," the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its officers, employees, agents and its elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Municipality or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) In the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

**FOURTH:** The term of this Agreement will commence January 1, 2023 and terminate September 30, 2023, unless terminated earlier as provided herein.

**FIFTH:** (a) The County reserves the right to cancel this Agreement on thirty (30) days' prior written notice to the Municipality when it deems it to be in its best interests to do so. In such event, the Municipality shall be compensated and the County shall be liable only for payment for



services already rendered under this Agreement prior to the effective date of termination at the rates specified in Schedule "B".

In the event of a dispute as to the value of the services rendered by the Municipality prior to the date of termination, it is understood and agreed that the County shall determine the value of such services rendered by the Municipality. Such reasonable and good faith determination shall be accepted by the Municipality as final.

(b) In the event the County determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for ten (10) days after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Notice hereunder shall be effective on the date of receipt.

**SIXTH:** The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to the County's receipt of funds from NYSOCFS to operate the Program, and that no liability shall be incurred by the County beyond the monies made available from NYSOCFS for this Agreement. The Municipality agrees that the County shall not be liable for any of the payments hereunder unless and until the County Commissioner of Finance has received said funds or said funds have been made available to said commissioner.

If, for any reason, the full amount of said funds is not paid over or made available to the County by NYSOCFS, the County may terminate this Agreement immediately or reduce the amount payable to the Municipality, in the discretion of the County. The County shall give prompt notice of any such termination or reduction to the Municipality. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State

Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

**SEVENTH:** All payments made by the County to the Municipality will be made by electronic funds transfer (“EFT”) pursuant to the County’s Vendor Direct Program. If the Municipality is not already enrolled in the Vendor Direct Program, the Municipality shall fill out and submit an EFT Authorization Form as part of this Agreement, which is attached hereto as Schedule “D” and made a part hereof. (In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, the Municipality understands that it must contact the County’s Finance Department.)

If the Municipality is already enrolled in the Vendor Direct Program, the Municipality hereby agrees to immediately notify the County’s Finance Department in writing if the EFT Authorization Form on file must be changed, and provide an updated version of the document.

**EIGHTH:** Schedule “E” is a form entitled, “Westchester County Youth Bureau Corrective Action Request”. This is a sample form that the Municipality can expect to receive if one or more areas where corrective action is required have been identified.

**NINTH:** All notices given pursuant to this agreement shall be in writing and effective upon mailing. All notices shall be sent by registered or certified mail, return receipt requested or by overnight mail and mailed to the following addresses:

To the County:           Executive Director – Youth Bureau  
                                  112 E. Post Road, 3<sup>rd</sup> floor  
                                  White Plains, New York 10601

with a copy to:           County Attorney  
                                  Michaelian Office Building, Room 600  
                                  148 Martine Avenue  
                                  White Plains, New York 10601

to the Municipality:   Executive Director  
                                  City of Rye

21 Locust Avenue  
Rye, New York 10580

or to such other addresses as may be specified by the parties hereto in writing.

**TENTH:** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, comments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the parties.

**ELEVENTH:** This Agreement is entered into solely between, and may be enforced only by, the County and the Municipality and shall not be deemed to create any rights in third parties, or to create any obligations of a party to any such third parties.

**TWELFTH:** The Municipality shall not delegate any duties or assign any of its rights under this Agreement without the prior express written consent of the County. The Municipality shall not subcontract any part of the Work without the express written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of Work under this Agreement without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. It is recognized and understood by the Municipality that for the purposes of this Agreement, all Work performed by a County-approved subcontractor shall be deemed Work performed by the Municipality and the Municipality shall insure that such subcontracted work is subject to the material terms and conditions of this Agreement. All subcontracts for the Work shall expressly reference the subcontractor's duty to comply with the material terms and conditions of this Agreement and shall attach a copy of the County's contract with the Municipality. The Municipality shall obtain a written acknowledgement from the owner and/or chief executive of subcontractor or his/her duly authorized representative that the subcontractor has received a copy of the County's contract, read it and is familiar with the material terms and conditions thereof. The Municipality shall include provisions in its subcontracts designed to ensure that the

Municipality and/or its auditor has the right to examine all relevant books, records, documents or electronic data of the subcontractor necessary to review the subcontractor's compliance with the material terms and conditions of this Agreement.

**THIRTEENTH:** The Municipality expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

**FOURTEENTH:** The Municipality shall comply, at its own expense, with the provisions of all applicable state and municipal requirements and with all state and federal laws applicable to this Agreement and the Municipality.

**FIFTEENTH:** Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of any Work or the payment of any fee or reimbursement due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied.

**SIXTEENTH:** This Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Westchester.

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

**SEVENTEENTH:** The Agreement shall not be enforceable unless signed by the parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF,** the County and the Municipality have caused this Agreement to be executed:

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_

Name: Kenneth W. Jenkins

Title: Acting County Executive

**CITY OF RYE**

By: \_\_\_\_\_

Name:

Title:

Approved by the Westchester County Board of Legislators of the County of Westchester by Act No. 2023-71

Approved:

\_\_\_\_\_  
Sr. Assistant County Attorney

The County of Westchester

2023 OCFS IMA Template.cmc.03.23.2023

**MUNICIPAL ACKNOWLEDGMENT**  
(Municipal Corporation)

[illegible]

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_ to me known, and known to me to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the within instrument, who being by me duly sworn did depose and say that he/she, \_\_\_\_\_ the \_\_\_\_\_ said \_\_\_\_\_ resides at \_\_\_\_\_ and that he/she is \_\_\_\_\_ of said corporation and knows the corporate seal of the said corporation; that the seal affixed to the within instrument is such corporate seal and that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his name thereto by like order.

Notary Public

**CERTIFICATE OF AUTHORITY**

(Municipality)

I, \_\_\_\_\_, certify that I am the  
(Officer other than officer signing contract)

\_\_\_\_\_ of the \_\_\_\_\_  
(Title) (Name of Municipality)

(the "Municipality") a corporation duly organized in good standing under the \_\_\_\_\_

(Law under which organized, e.g., the New York Village Law, Town Law, General Municipal Law)

named in the foregoing agreement that \_\_\_\_\_  
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

\_\_\_\_\_ of the Municipality,  
(Title of such person),

that said agreement was duly signed for on behalf of said Municipality by authority of its

\_\_\_\_\_ thereunto duly authorized,  
(Town Board, Village Board, City Council)

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

\_\_\_\_\_  
(Signature)

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_ whose signature appears above, to me known, and know to be the  
\_\_\_\_\_ of \_\_\_\_\_,  
(Title)

the municipal corporation described in and which executed the above certificate, who being by me  
duly sworn did depose and say that he, the said \_\_\_\_\_  
resides at \_\_\_\_\_, and that he/she  
is the \_\_\_\_\_ of said municipal corporation.  
(Title)

\_\_\_\_\_  
Notary Public                   County

**SCHEDULE "A"**  
**SCOPE OF SERVICES**

<b>Implementing Agency:</b> Rye Youth Council	<b>Program Title:</b> Youth Educator
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**FUND AMOUNTS:**

Total Program Amount: 30000	Funds Requested: <b>2600</b>	Cost Per Youth: 35
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**AUTHORIZED VOUCHER SIGNEEs:**

1.	Last Name: <b>Spice</b>	Rachel	Title: Board Treasurer
2.	Last Name:	First Name:	Title:

**AGENCY /MUNICIPALITY INFORMATION:**

AGENCY MONITOR REPORT INFORMATION:				
Implementing Agency is: (check box)		Not For Profit <input checked="" type="checkbox"/>		Public <input type="checkbox"/>
Federal ID Number: 23-7170074				
Agency Website: ryeyouthcouncil.org		Implementing Agency/Municipality: City of Rye		
Mailing Street Address:21 Locust Ave				
Suite/Floor/Room # / P.O. Box:	City: Rye		State: NY	Zip Code:10580

**AGENCY /MUNICIPALITY EXECUTIVE DIRECTOR :**

Last Name: Dominici	First Name: Lisa	Title: Executive Director		
Phone Number: 914-552-5281	Extension:	Fax:	Email: <a href="mailto:execdirector@ryeyouthcouncil.org">execdirector@ryeyouthcouncil.org</a>	

**PROGRAM CONTACT PERSON:**

Last Name: Lodato	First Name: Jessica	Title: Youth Educator		
Phone Number: 914-967-3838	Extension:	Fax:	Email: <a href="mailto:jlodato@ryeyouthcouncil.org">jlodato@ryeyouthcouncil.org</a>	

**PERIOD OF ACTUAL PROGRAM OPERATION :**

HOURS OF OPERATION: 9-5	Days of operation M-F	From: 9	To: 6:30
Other <input type="checkbox"/> explain: _____			



<b>PROJECTED TOTAL PROGRAM ENROLLMENT</b>	<b>837</b>
<p><b>PROGRAM SUMMARY:</b>  Rye Youth Council (RYC) is a nonprofit 501(c)3 that supports the social, emotional health and mental health of youth by engaging students, parents, and educators with intentional, accessible, and actionable support programs and services.</p> <p>Incorporated in 1971, RYC is the only local organization that focuses solely on the social, emotional, and mental well-being of the youth in our community. All RYC programs are provided for free or a nominal charge and are based on the 5 Social Emotional Learning (SEL) core competencies. We primarily serve individuals who live or attend schools in Rye and Rye Neck, though our programs are open to all young people. RYC is on the steering committee for RyeACT, our City's Substance Use Prevention Coalition, and serves as the Coalition's lead for the Youth &amp; Youth Serving Sector. RYC provides resources for building community awareness, increasing access to support and treatment, and providing positive alternatives to Rye's youth.</p> <p>This program funding focuses on the SEL Curriculum/DBT in grades K-2 and DBT-Steps A curriculum taught to every 6<sup>th</sup> grade student in Rye.</p> <p>DBT-Steps A is a universal SEL curriculum designed to help all adolescents develop coping strategies and decision-making abilities for school and the future. It's based on the skills of comprehensive dialectical behavior therapy that have shown to be effective with adults and adolescents experiencing mild to severe levels of emotional and behavioral difficulties.</p>	

PROGRAM SITES- Most significant (3 Maximum)					
Type	Address (Street, City, State, Zip)	Assembly District #	NYS Senate District #	Local Planning Board	City Council District
	Rye Middle School	091	37	Rye City	City of Rye
	Rye Elementary Schools	091	37	Rye City	City of Rye

PLEASE DESCRIBE HOW THE PROGRAM FOR WHICH YOU ARE APPLYING FOR FUNDING, ADDRESSES EACH OF THE FOLLOWING **8 FEATURES OF POSITIVE YOUTH DEVELOPMENT SETTINGS**:

(These eight features of effective youth development settings serve as quality standards for youth programs)

**1. Physical & Psychological Safety:** Safe and health-promoting facilities; practices that increase safe peer group interaction and decrease unsafe or confrontational peer interactions.

RYC programs occur in school and public settings that meet NY State safety and health requirements and are facilitated by trained counselors. Programs encourage experiential learning and foster positive and respectful peer group interaction.

The elementary school youth educator teaches a Dialectical Behavioral Therapy Steps-A curriculum that educates youth on conflict resolution, violence reduction, bullying, healthy decision-making, Peer pressure, feelings, and relationships. The DBT-Steps A curriculum to all 6th-grade students is an extension of similar topics taught by RYC in the 3<sup>rd</sup> and 4<sup>th</sup> grade. RYC provides mediation services where the youth educator works directly with youth and classes in conflict to resolve differences and demonstrate respectful interaction. This work nurtures the development of positive peer relationships, respect for diversity, service learning, self-esteem, self-advocacy, self-awareness, leadership and citizenship.

**2. Appropriate Structure:** Limit setting; clear and consistent rules and expectations; firm enough control; continuity and predictability; clear boundaries; age appropriate monitoring.

RYC program staff and advisors are trained youth educators, social work, mental health and counseling professionals whose expertise focuses on youth population grades K-college. RYC understands the developmental needs of each age group and the importance of setting clear boundaries, rules and controls. Each program is designed age appropriately, with relevant rules, expectations, and monitoring built into its foundation. While RYC staff establish themselves as trusted and understanding adults, their authority and consistency is clear to all who interact with them.

**3. Supportive Relationship:** Warmth; closeness; connectedness; good communication; caring; support; guidance; secure attachment; responsiveness.

RYC programs foster social and emotional learning and character development in stimulating and secure environments. The program creates learning opportunities for youth to gain an understanding of themselves and the world around them. Program staff are passionate about developing caring and supportive relationships with participants. They are sought after by school administration, teachers, parents and students themselves to provide guidance and to offer support around social/emotional issues and concerns and are viewed as caring but firm role models for youth of all ages.

**4. Opportunities to Belong:** Opportunities for meaningful inclusion, regardless of one's gender; ethnicity; sexual orientation, or disabilities; social inclusion; social engagement, and integration; opportunities for socio-cultural identity formation; support for cultural and bicultural competence.

Rye Youth Council programs create learning environments where all youth are accepted, participate and feel accomplished. RYC creates service and educational opportunities for all ages that teach awareness, acceptance and the importance of socio-cultural differences. Programs bring groups of people together who then emerge with a respect and admiration for each other's differences. The organization is an ally and voice for marginalized students, and many of our programs directly address the need to increased acceptance, understanding, and support. Our staff is multi-cultural and multi-racial.

**5. Positive Social Norms:** Rules of behavior; expectations; injunctions; ways of doing things; values and morals; obligations for service.

Trained staff and supervisors will ensure appropriate boundaries and expectations for youth and for staff. Staff will model appropriate pro-social behavior and interactions between youth and staff. Staff will intervene as necessary to correct inappropriate behavior and will acknowledge positive social norms. Many RYC programs are experiential learning opportunities, where youth absorb the impact of positive social behavior and interactions firsthand. Clear expectations are set around social interactions and engagement in RYC activities. Through their own actions and words, RYC staff model positive behavior, communication, values and morals. Discussions and positive role modeling occur while youth are actively engaged in programs, creating a deeper understanding and awareness not found through passive learning.

**6. Support for Efficacy & Mattering:** Youth-based; empowerment practices that support autonomy; making a real difference in one's community, and being taken seriously. Practices that include enabling, responsibility granting, and meaningful challenge. Practices that focus on improvement rather than on relative current performance levels.

RYC programs foster independence, self-awareness, social responsibility and character development. For middle school aged youth, RYC programs place them in environments where they interact with people of all ages – younger kids, peers and senior citizens. Participants engage in decision-making, take on leadership roles and get to experience firsthand the impact their time and actions have on their community.

The DBT Steps-A curriculum taught by our Youth Educator to District 6th graders is a Universal SEL curriculum designed to help all adolescents develop coping strategies and decision-making abilities for school and the future. It is based on the skills of comprehensive dialectical behavior therapy that have shown to be effective with adults and adolescents experiencing mild to severe levels of emotional and behavioral difficulties. It also has been shown to be effective with high-risk adolescents engaging in suicidal and non-suicidal self-injury behavior.

**7. Opportunities for Skill Building:** Opportunities to learn physical, intellectual, psychological, emotional, and social skills; exposure to intentional learning experiences, opportunities to learn cultural literacy, communication skills and good habits of mind; preparation for adult employment, and opportunities to develop social and cultural capital.

RYC programs are designed to support and promote the 5 core competencies of social-emotional learning: (1) Self-awareness (2) Self-management (3) Responsible Decision Making (4) Social Awareness, and (5) Relationship Skills. Our staff focuses on the development of social skills, promote awareness and understanding of communication skills, increases self-esteem, instills a sense of personal and societal identity, encourages teamwork and a positive work ethic. The DBT-Steps A curriculum that RYC delivers to every 6th-grade student is part of the Rye City School District's Habits of Mind curriculum.

All RYC programs increase protective factors that guard against substance use and misuse and strive to decrease negative behavior. Connection to the community and trusted adults is a central theme in all we do.

The elementary school DBT lessons and the 6<sup>th</sup> grade DBT-Steps A curriculum achieves the following:

\*Increases Stability: students gain positive role models with whom they interact on a regular basis, as well as positive relationships to civic attitudes

\*Strengthen Communities: preserve historical and cultural traditions through intergenerational programming, enhance community spirit through community-based events, and strengthen partnerships and collaboration among youth-serving community organizations and individuals.

\* Encourage Cultural Exchange: Intergenerational programs and in-school curriculum promote the transmission of cultural traditions and values, creating a sense of personal and societal identity while encouraging tolerance

**8. Integration of Family, School, & Community Efforts:** Concordance; coordination and synergy among family, school, and community.



The Rye Youth Council (RYC) supports and promotes the social and emotional health and mental well-being of children, teens and young adults in our community. Utilizing the CASEL SEL model, RYC understands and embraces the need to serve as a support to schools, parents and caregivers, students, and community. RYC programs are based within and outside of the schools and are offered throughout the day, afternoon and evening.

RYC actively participates and often takes a leadership role in key community efforts:

- RYC serves on the steering committee and is the lead Youth Serving Organization for RyeACT, the community's substance use prevention coalition;
- RYC is a co-founder and lead in a new collective effort entitled, "Growing the Positive", that promotes improved coordination and collaboration among Rye's youth-serving organizations;
- RYC is a critical partners for the Rye City School District, offering support and guidance for youth mental health services, parent education, and support.
- All RYC programs are implemented in collaboration with another youth-serving organization. We firmly believe that collaboration is key to best serve our youth.

### **Monitoring and Evaluation Methods**

**9. Monitoring Methods:** Monitoring is defined as a systematic review of a funded program based upon the requirements of a contract, rules, regulations, policies, and/or State and Local Laws. It identifies the degree to which a program or operation accomplishes the activities specified in a contract/ application, and how it complies with requirements. Describe your process to be used to monitor on a regular basis. Include who will be responsible, frequency, and documentation of monitoring activities.

RYC staff develops a Program Guide for each of its programs and services, with key information such as Program History, Objective, Target Audience/Participation, Delivery, Key Stakeholders, Main Benefits, Key Impact/Outcomes, and Success Measures. For each program offered, the RYC staff leading the program captures following data:

Date, Time, Duration of Program

Attendance

Session/Program Goal

Outcomes (based on user surveys when possible)

RYC Executive Director is responsible for ensuring compliance of the reports and ensuring that all funding contracts meet specified policies and regulations.

**10. Evaluation Methods:** Evaluation methods are the process to determine the value or amount of success in achieving a pre-determined program or operational goal. Evaluations can identify program strengths and weaknesses in order to improve the program. Evaluations can verify if the program is really running as originally planned. Describe the process to be used to evaluate the attainment of the objectives. Include what will be measured, who will conduct the evaluation, when it will be conducted, and how the results will be used.

RYC will perform internal program evaluations at the end of each program or the school year (end of June), whichever is more appropriate. Evaluations will include a written summary by program directors/youth educators summarizing activities, including data captured in the program reports. A review of each program and service will take place between Executive Director and Program Directors/Educator, with support by relevant Board Committees. The curriculum delivered by the Youth Educator to the students in the Rye City School District is chosen and measured by the District. RYC fully participates in the curriculum development and assessment.

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**INDIVIDUAL PROGRAM APPLICATION**  
Program Summary-Program Components

AGENCY NAME: Rye Youth Council

PROGRAM TITLE: Youth Educator/Positive Youth Development

**CODE:****DESCRIPTION:**

<b>4CVC</b>	<b>4CVC</b>	<b>Citizenship/Civic Engagement</b>
<b>GOAL CODE:</b>	<b>41</b>	Children and youth will demonstrate good citizenship as law-abiding, contributing members of their families, schools and communities.
<b>OBJECTIVE:</b>	<b>413</b>	Children and youth will understand and respect people who are different from them
<b>SOS:</b>	<b>0420</b>	
<b>Performance Measures:</b>		
<b>How Much:</b>	0420A.1	# youth participating (unduplicated)
<b>How Well:</b>		
<b>Better Off:</b>	0420C.1	# youth with increased skills empowering them in community engagement.

Use whole numbers when entering information for Gender, Ethnicity, Ages, and Target Population areas, **NOT** percentages. Please note that the NYS OCFS web based application only accepts Male or Female at this time.

<b>GENDER OF PROGRAM PARTICIPANTS:</b> (Enter # of participants per gender)	<b>MALE</b> <u>433</u>	<b>FEMALE</b> <u>404</u>
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<b>ETHNICITY:</b> (Enter number of participants per ethnic group)	WHITE <u>634</u>	BLACK OR AFRICAN AMERICAN <u>5</u>	HISPANIC OR LATINO <u>89</u>
	AMERICAN INDIAN OR ALASKAN NATIVE _____	ASIAN <u>47</u>	
	NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER _____	TWO OR MORE RACES <u>62</u>	

<b>AGES</b>	0-4 _____	5-9 <u>606</u>	10-14 <u>231</u>	15-17 _____	18-20 _____	21+ _____
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**IS TARGET POPULATION SERVING DISCONNECTED YOUTH:**No ☒Yes ☐

(Enter number of participants per population described)

IF "YES", Youth aging out of foster care \_\_\_\_\_ Children of incarcerated parents \_\_\_\_\_  
Youth in the juvenile justice system who re-enter the community \_\_\_\_\_ Runaway and Homeless Youth \_\_\_\_\_

**SCHEDULE "B"**  
**BUDGET**

For the Period of Operation: January 1, 2023 - Sep. 30, 2023	Contract #: "To Be Assigned"
Agency/Municipality Name: Rye Youth Council/City of Rye	Program Title: Positive Youth Development

**1. PERSONAL SERVICES**

Position Title	Rate of Pay	Basis (H,W,BW, SM)	Total Program Amount	Total Funds Requested for this Program
Youth Educator	2,291.66	SM	2,600	
<b>TOTAL SALARIES AND WAGES</b>			2,600	
<b>TOTAL FRINGE BENEFITS</b>				
<b>TOTAL PERSONNEL SERVICES (1)</b>			\$ 2,600	

**2. CONTRACTED SERVICES AND STIPENDS**

Type of Service or Consultant Title	Rate of Pay	Base (S,M,HR)	Total Program Amount	
<b>TOTAL CONTRACTED SERVICES AND STIPENDS (2)</b>			\$ -	

**3. MAINTENANCE & OPERATION**

Complete Attachment "E"	Total Program Amount	
<b>TOTAL MAINTENANCE AND OPERATION (3)</b>		

**TOTAL PROGRAM AMOUNT**      \$ 2,600

**TOTAL WCYB FUNDS REQUESTED**      \$ 2,600

List Other Funding Sources	\$ 2,600	Reimbursable Total
		Municipal Funding
Rye City School District	\$ 25,000	Other Sources

**WESTCHESTER COUNTY YOUTH BUREAU**  
**FISCAL REQUIREMENTS AND POLICIES**

Westchester County Youth Bureau funds many different programs in each budget year. This material is designed to clarify the Bureau's fiscal requirements and policies regarding these programs. If questions arise, please contact the Youth Bureau at (914) 995-2755.

**Below is a list of current funding categories:**

All expenditures must be made in accordance with an approved budget, including any budget amendments. Programs funded by the Youth Bureau must file listings of all program expenses paid prior to receiving funds. A Program Expenditure Summary and applicable Program Expenditure Reports must be filed for each program. Listed below is a summary of the forms, which make up completed claim forms for reimbursement of program expenses:

<u>Type of Funding</u>	<u>Name of Form</u>	<u>Form Number</u>
NYS OCFS	Program Expenditure Summary	OCFS3125
	Salaries Report	OCFS3126
	Fringe Benefits Report	OCFS3127
	Consultants, Contracted Services & Stipends Report	OCFS3128
	Miscellaneous	OCFS3129
	Travel	OCFS3130

All claims should be submitted in original and must have original signature. The Contract Number must be entered on all the claim forms for Local Tax Levy Programs. The Executive Director or another authorized official of the agency must make the certification on the Program Expenditure Summary report.

All claims should be prepared and submitted quarterly. These quarterly claims should be submitted not later than the 20<sup>th</sup> date of the month following the end of the quarter, except the 4<sup>th</sup> quarter which is due on January 10<sup>th</sup> of the following year.

Copies of back-up documents should be submitted with the expenditure reports. Listed below is a summary of the back-up documents for various expenses:

<u>Type of Expense</u>	<u>Back-up Documents</u>
Salary & Wages	Payroll Register and Proof of Payment
Fringe Benefits	Invoice from the Vendor and Proof of Payment
Consultant/Contracted Services	Signed Agreement, Invoice and Proof of Payment
OTPS/Misc.	Invoice from the Vendor and Proof of Payment
Employee Exp. Reimbursement Payment.	Employee Exp. Request Form, Receipt, and Proof of

The Youth Bureau audits each claim against appropriate Westchester County and NY State Finance Law, Rules & Regulations, Fiscal Policies & Procedures, and the approved budget of each program and any approved budget amendments. Claims with calculation errors, and not submitted in accordance with Fiscal Policies & Procedures and approved budget will be returned. All claims must be sent to:  
 Westchester County Youth Bureau  
 112 East Post Road, 3rd Floor  
 White Plains, NY 10601



**SCHEDULE "C"**  
**STANDARD INSURANCE PROVISIONS**  
(Youth & Human Services)

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. The Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

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

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

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

b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

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

c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

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

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

e) Abuse and Molestation Liability, either by separate policy of insurance or through endorsement to the General Liability Policy or Professional Liability Policy. (Limits of \$1,000,000.00 per occurrence/2,000,000 aggregate). This insurance shall include coverage for the following, including coverage for client on client, counselor client, and third parties:

- i. Misconduct
- ii. Abuse (including both physical and sexual)
- iii. Molestation

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

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

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

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

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

**SCHEDULE "D"**  
**ELECTRONIC FUNDS TRANSFER (EFT)**

The Contractor shall complete the "Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form" as part of the County's 'Vendor Direct' program utilizing Electronic Funds Transfer ("EFT") payments.

The County will deposit payments via EFT two business days after the voucher/invoice is processed. Please note that Saturdays, Sundays, and legal holidays are not considered business days.

Under the Vendor Direct program, the Contractor will receive an e-mail notification one day prior to the day the payment will be credited to its designated account. The e-mail notification will come in the form of a remittance advice with the same information that would appear on a paper check stub, and will contain the date that the funds will be credited to its account.

The Contractor shall contact the County in the same manner for a discrepancy in the amount received via EFT as it would for a discrepancy in the amount received in a paper check.

In the unlikely event that the Contractor did not receive the money in its designated bank account on the date indicated in the e-mail, the Contractor shall contact the County's Finance Department's Accounts Payable Office at 914-995-2788.

The Contractor shall promptly notify the County whenever it changes any information regarding, or closes, the bank account that it enrolled in the Vendor Direct program for EFT payments. The Contractor shall then complete, and provide to the County, a new "Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form". The Contractor shall contact the County's Finance Department's Accounts Payable Office at 914-995-2788 to obtain a new form.

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[NO FURTHER TEXT ON THIS PAGE]

## Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

☐ New  
☐ Change  
☐ No Change

## Section I - Vendor Information

1. Vendor Name:		
2. Taxpayer ID Number or Social Security Number:	<div style="border: 1px solid black; width: 100%; height: 30px; position: relative;"> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); font-size: 20px;">               </div> </div>	
3. Vendor Primary Address		
4. Contact Person Name:	Contact Person Telephone Number:	
5. Vendor E-Mail Addresses for Remittance Notification:		
6. Vendor Certification: <i>I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment. In the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.</i>		
Authorized Signature	Print Name/Title	Date

7. Bank Name:	
8. Bank Address:	
9. Routing Transit Number:	10. Account Type: (check one) <input type="checkbox"/> Checking <input type="checkbox"/> Savings
11. Bank Account Number:	12. Bank Account Title:
13. Bank Contact Person Name:	Telephone Number:
14. FINANCIAL INSTITUTION CERTIFICATION (required <b>ONLY</b> if directing funds into a Savings Account <b>OR</b> if a voided check is not attached to this form): <i>I certify that the account number and type of account is maintained in the name of the vendor named above. As a representative of the named financial Institution, I certify that this financial Institution is ACH capable and agrees to receive and deposit payments to the account shown.</i>	
_____ Authorized Signature	_____ Print Name / Title
_____ Date	

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Westchester County • Department of Finance • Treasury Division

## Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

### GENERAL INSTRUCTIONS

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

### Section I - VENDOR INFORMATION

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

### Section II - FINANCIAL INSTITUTION INFORMATION

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

**SCHEDULE "E"**

**SAMPLE CORRECTIVE ACTION REQUEST FORM**



George Latimer, County Executive  
Dr. DaMia Harris-Madden, Executive Director  
Youth Bureau



**Westchester County Youth Bureau  
Corrective Action Request**

The purpose of this form sent on \_\_\_\_ (date) \_\_\_\_ is to notify \_\_\_\_ (agency name) \_\_\_\_ of action needed regarding \_\_\_\_ (program name) \_\_\_\_.

Monitoring of the abovementioned program has identified one or more areas where corrective action is needed. Please see the item(s) checked below along with monitor notes for the appropriate plan of action. All request for corrective action(s) must be addressed within 30 days of the notice.

- ☐ Monthly Statistical Report(s) are outstanding. Please see monitor notes below for action and correction details.
- ☐ Quarterly Statistical Report(s) are outstanding. Please see monitor notes below for action and correction details.
- ☐ Annual Report is outstanding. Please see monitor notes below for action and correction details.
- ☐ Failure to respond to site visit request(s). Please see monitor notes below for action and correction details.
- ☐ Failure to submit fiscal claim(s). Please see monitor notes below for action and correction details.

**Monitor Notes:**

Thank you for your immediate attention to this matter and for your cooperation with making the appropriate action and/or corrections. Questions or concerns can be sent to the Program Monitor at the contact listed below.

\_\_\_\_ Program Monitor Name \_\_\_\_

\_\_\_\_ Program Monitor Email \_\_\_\_

112 East Post Road 3<sup>rd</sup> fl.  
White Plains, New York 10601

Telephone: (914) 995-2745  
Fax: (914) 995-3871

Website: [www.westchestergov.com/youth](http://www.westchestergov.com/youth)



# CITY COUNCIL AGENDA

DEPT.: City Manager

DATE: June 7, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:**

Consideration of a request from Sleep in Heavenly Peace (SHP) Beds Charity to use the City Hall parking lot on Saturday, June 24, 2023 from 8:00 am – 2:00 pm to build beds for children in need. Rain date would be Saturday, July 8, 2023.

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the Council grant the request.

RESOLVED, that the City Council approves SHP use of the City Hall parking lot on Saturday, June 24, 2023 from 8:00 am - 2:00 pm to build beds for children in need. Rain date would be Saturday, July 8, 2023.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

**BACKGROUND:**

SHP is a national 501(c)3 charity now with 200+ nationwide chapters. The organization builds beds for kids who don't have one and deliver them to households free of charge. SHP chapters conduct three activities; fund raising, bunk bed 'Build Days', free bed delivery/assembly at the residence of children in need. Build days are run by the chapter core team with a volunteer group from a church, sports team, company or eagle scout groups, with ages 12+. SHP uses power generators, mitre saws, drill presses (adult run) and power sanders. Volunteer Build Days generally last 4 hours with added time needed for setup and tear-down.

The same event was very successful in 2020 and 2021.



## Ruttenberg, Noga P.

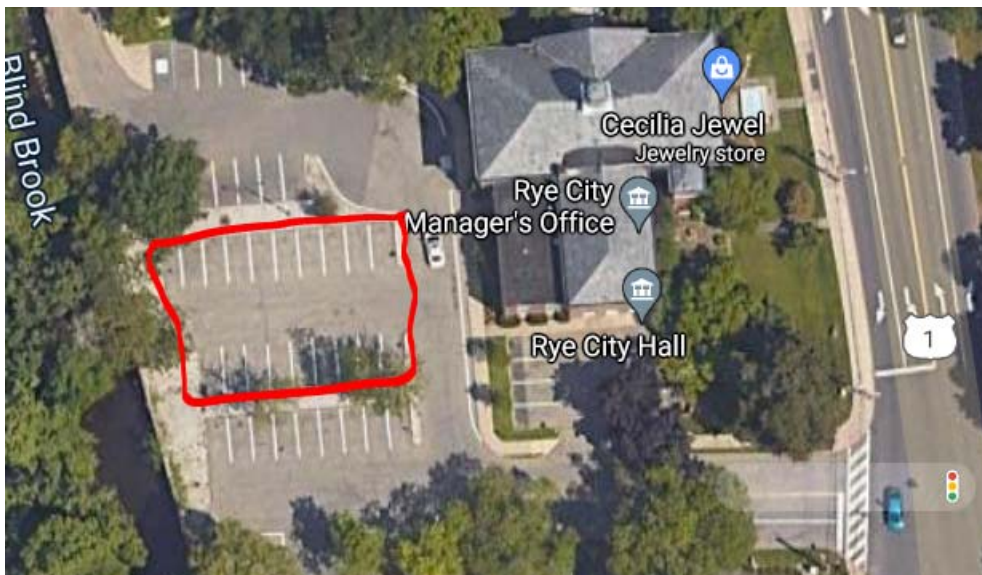
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**From:** matt.ambrogi@shpbeds.org  
**Sent:** Friday, May 22, 2023  
**To:** Ruttenberg, Noga P.  
**Cc:**  
**Subject:** RE: SHP Beds, June 24

The reason for the message, is to ask if we/SHP might be able to request use of the City parking lot space behind City Hall on Saturday June 24th. Rain date would be July 8th.

The rest of the detail would be basically the same as we organized in 2021 and in 2020. As a reminder, the space in focus is only the middle section, not that of the Library side, or the side closer to the YMCA.

The event time will be 8:00 am – 2:00pm.





# CITY COUNCIL AGENDA

DEPT.: City Manager's Office

DATE: May 25, 2023

CONTACT: Greg Usry, City Manager

**AGENDA ITEM:** Consideration of a request by Christ's Church for use of the City streets (Rectory Street) on the following dates:

- 6/11/23, 9:00am-1:00 pm - Annual Church Picnic (retroactive request)
- 9/10/23, 9:00am-1:00pm - Homecoming Church Picnic
- 10/21/23, 8:00-5:00pm - CCNS Fall Family Day
- 12/2/23-12/3/23, 8:00am-5:00pm - Annual Christ's Church Christmas Tree Sale
- 5/19/24, 9:00am-1:00pm - Pentecost Sunday Food Trucks
- 6/2/24 - 9:00am-1:00pm - Annual Church Picnic

**FOR THE MEETING OF:**

June 14, 2023

**RECOMMENDATION:** That the City Council approve the request from Christ's Church.

RESOLVED the City Council approves use of City Streets on the requested dates for Christ's Church events.

**IMPACT:** ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

**BACKGROUND:** Christ's Church is requesting use of Rectory streets for various events for the remainder of 2023 through June of 2024.

See attached COI.



RYENEW0002

SCOT

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/24/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Church Insurance Agency Corp 210 South St, Ste 2 Bennington, VT 05201-2894		<b>CONTACT NAME:</b> Jennifer Scott	
		<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
		<b>E-MAIL ADDRESS:</b>	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Church Ins Co of Vermont	
		<b>NAIC #</b> 10669V	
<b>INSURED</b> Christs Church Rectory St Rye, NY 10580-3817		<b>INSURER B:</b>	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	N	N	NYS0001962	7/15/2023	7/15/2024	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
							MED EXP (Any one person) \$ 30,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 5,000,000
							PRODUCTS - COMP/OP AGG \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
	OTHER:						
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR						EACH OCCURRENCE \$
	<b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below		N / A				E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

Proof Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE