

**TOWN OF MAMARONECK
TOWN BOARD AGENDA
WEDNESDAY, JANUARY 20, 2016**

THE TOWN BOARD WILL CONVENE – at 5:00 PM, In Conference Room D to discuss:

1. Review - Board & Commission Appointments
2. Review - Community Choice Aggregation Agreement
3. Review – Revised Town Procurement Policy
4. Review – 2016 Goals & Priorities
5. Update – LMC-TV Space Needs
6. Review – Westchester Joint Water Works Capital Projects
7. Update – Weaver Street Sidewalk Extension
8. Update – Hampshire Country Club Application
9. Discussion – Weapons in Town Facilities
10. New Business

CALL TO ORDER – AT 8:00PM CONFERENCE ROOM C

SUPERVISOR'S SUMMARY REPORT

CITIZEN COMMENTS

- PUBLIC HEARING -**
1. Amendment – Special Permit Cambium Housing Development
 2. "Addition of Building Inspector to the Town Code" Law

BOARD OF FIRE COMMISSIONERS

1. Fire Claims
2. Other Fire Department Business

AFFAIRS OF THE TOWN OF MAMARONECK

1. Appointments – Boards & Commissions
2. Authorization – Transfer of Funds – Trees
3. Authorization – Correction of 2016 Budget
4. Authorization – Transfer of Funds – Town Center Budget
5. Authorization – Engagement Letter, Wilson, Elser & Moskowitz
6. Approval of Revised Procurement Policy
7. Authorization – Community Choice Aggregation Agreement
8. Authorization – Snow Removal Contract Westchester County Roads
9. Authorization – 2016 Ambulance District Service Fees

APPROVAL OF MINUTES – January 6, 2016

REPORTS OF THE COUNCIL

TOWN CLERK'S REPORT

NEXT REGULARLY SCHEDULED MEETINGS – February 3, 2016 & February 17, 2016 the Board will meet in CONFERENCE ROOMS C & D

Any physically handicapped person needing special assistance in order to attend the meeting should call the Town Administrator's office at 381-7810.

WORK SESSION

ITEM #1

BOARD, COMMITTEE OR COMMISSION	Member	TERM EXPIRES	ACTIONS	NOTES
BOARD OF ARCHITECTURAL - 5 Members - 2 Alternates - 3 yr term,				Liaison - T. Murphy
	Donald Meeker	A	12/31/15	
	Ed Jacobson - Chair	Chair	12/31/15	
	Ed Jacobson	B	12/31/15	
	Diane Neff	E	12/31/17	
	Ken Ricci	C	12/31/16	
	Joseph Shein	D	12/31/16	
BOARD OF ETHICS - 5 members, 3 yr terms				Liaison - E. Odierna
	Robert Degen	A	12/31/15	
	Grace D'Alessio	B	12/31/15	
	Ted Hecht	C	12/31/16	
	Martin Ronan	Chair	12/31/15	
	Martin Ronan	D	12/31/16	
	Carol Scharff	E	12/31/17	
COASTAL ZONE -5 Members from each Municipality , 3 year terms				Liaison - A. Katz
	Tara Anderson		08/30/16	
	Howard McMichael		08/31/18	
	Matthew Teitsch		08/31/18	
	William Zelenka		08/31/17	
	Alan Mason		08/31/18	
HOUSING AUTHORITY - 5 members, 5 yr terms				Liaison - T. Murphy
	Robert Kirby	A	12/31/18	
(Chair apptd by Authority)	Richard Cherry	B	12/31/19	
	Sal Iacono	C	12/31/15	
	Caroline Silverstone	D	12/31/16	
	Dolores Battalia	E	12/31/17	
PLANNING BOARD - 7 members, 7 yr terms				Liaison - J. Elkind-Eney
	Ralph Engel	Chair	12/31/15	has agreed to cont. to serve
	Ellen Dunkin	Vice Chair	12/31/15	has agreed to con.t to serve
	Eileen Weingarten	A	12/31/17	
	Ellen Dunkin	B	12/31/17	
	Ralph Engel	C	12/31/17	

Stephen Marsh	D	12/31/18	
Ed Papazian	E	12/31/18	
George Roniger	F	12/31/18	
Ira Block	G	12/31/19	
Don Kravet	ALT. A	12/31/19	
Ron Mandel	ALT. B	12/31/19	
TRAFFIC COMMITTEE - 7 members, 3 year terms			Liaison - A. Katz
Eve Neuman	A	12/31/2015	
Donald Sutherland	B	12/31/15	has agreed to cont. to serve
Linnet Tse	C	12/31/16	
Doris Block	D	12/31/16	
Doris Block - Chair	Chair	12/31/15	
Stephen Bartell	E	12/31/17	
Camille Odierna	F	12/31/17	
Kimberly Larsen	G	12/31/17	
ZONING BOARD OF APPEALS -5 members - 5 yr terms			Liaison - E. Odierna
Jonathan Sacks	A	12/31/18	
Jeff King	B	12/31/18	
Irene O'Neil	C	12/31/19	
Arthur Wexler	Chair	12/31/15	
Arthur Wexler	D	12/31/19	
Evans Simpson	E	12/31/15	
Elizabeth Cooney	ALT. A	12/31/20	
VACANT	ALT. B	12/31/15	
BOARD OF ASSESSMENT REVIEW 5 Members 2 Alt - 5 years			Liaison - J. Elkind-Eney
Cary Sleeper	A	09/30/18	
Leonard Verrastro	B	09/30/19	
Kathleen Spadaro	C	09/30/15	has agreed to cont. to serve
Eve Neuman	D	09/30/16	
Nancy Wasserman	E	09/30/17	
VACANT	ALT 1	09/30/17	
VACANT	ALT 2	09/30/12	

LIBRARY BOARD OF TRUSTEES - 3 Members from each Municipality - 5 years			Liaison - A. Katz
Maureen LeBlanc		05/31/18	
Iven Taub		05/31/16	
Jen Connley		05/31/20	
RECREATION COMMISSION 7 Members, 2 Alternates - 7 years			Liaison - J. Elkind-Eney
Robert Morello	A	12/31/17	
James Druker	B	12/31/17	
Susan Sigel	C	12/31/17	
William Paonessa	D	12/31/18	
Rita Plansky	E	12/31/18	
Terry Rainaldi	F	12/31/18	
Nathalie Orans	G	12/31/19	
SUSTAINABILITY COLLABORATIVE 10 Members - 3 years			Liaison - N. Seligson
VACANT	A		
VACANT	B		
Frank Owens	C	12/31/15	
Elizabeth Radow	D	12/31/16	
Michele Lewis	E	12/31/16	
Stephen Moser	F	12/31/16	
George Roniger	G	12/31/17	
Marc Karell	H	12/31/17	
Tony Gelber	I	12/31/17	
Mitch Green	J	12/31/17	
MC-TV BOARD OF CONTROL			
Richard Slingerland	Administrator		
Tont Siligato	Secr/Treas.		
Mayor Norm Rosenblum	VOM		
Mayor Anne McAndrews	VOL		
Councilman Ernie Odierna	TOM		

RESOLUTIONS
January 20, 2016

BOARD OF ARCHITECTURAL REVIEW

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed as Member B of the Board of Architectural Review, and
Ed Jacobson
BE IT FURTHER

RESOLVED, that _____ be reappointed as Member A of the Board of Architectural Review, and
Donald Meeker
BE IT FURTHER

RESOLVED, that the foregoing appointments shall be effective (A) immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and (B) shall expire on December 31, 2018, and

BE IT, FURTHER

RESOLVED, that _____ shall serve as Chairperson
Edward Jacobson
of the Board of Architectural Review for the year 2016.

BOARD OF ETHICS

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed to the position of Member A of the Board of Ethics; and
Robert Degen

BE IT FURTHER

RESOLVED, that _____ be reappointed to the position of Member B of the Board of Ethics; and
Grace D'Alessio

BE IT FURTHER

RESOLVED, that the foregoing appointment shall be effective immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2018, and

BE IT, FURTHER

RESOLVED, that _____ shall serve as the Chairperson of the Board of Ethics for the
Martin Ronan
year 2016.

HOUSING AUTHORITY

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed to the position of Member C of the Housing Authority; and
Sal Iacono

BE IT FURTHER

RESOLVED, that the foregoing appointment shall be effective immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2020; and

PLANNING BOARD

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ shall serve as Chairperson of the Planning Board for the year 2016, and
Ralph Engel

BE IT FURTHER

RESOLVED, that _____ shall serve as Vice Chairperson of the Planning Board for the year 2016.
Ellen Dunkin

TRAFFIC COMMITTEE

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed to the position of Member B of the Town of Mamaroneck Traffic
Donald Sutherland
Committee, and

BE IT FURTHER

RESOLVED, that _____ be reappointed to the position of Member A of the Town of Mamaroneck
Eve Neuman
Traffic Committee, and

BE IT FURTHER

RESOLVED, that the foregoing appointments shall be effective immediately upon the appointees taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2018.

BE IT, FURTHER

RESOLVED, that _____ shall serve as the Chairperson of the Traffic Committee for the
Doris Block
year 2016.

ZONING BOARD OF APPEALS

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed as Member E of the Zoning Board of Appeals, and
Evans Simpson
BE IT FURTHER

RESOLVED, that the foregoing appointments shall be effective immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2020, and

BE IT FURTHER

RESOLVED, that _____ shall serve as Chairperson of the Zoning Board of Appeals for the year 2016.
Arthur Wexler

BOARD OF ASSESSMENT REVIEW

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed as Member C of the Board of Assessment Review, and
Kathleen Spadaro
BE IT FURTHER

RESOLVED, that the foregoing appointments shall be effective immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2020, and

SUSTAINABILITY COLLABORATIVE

On motion of _____, seconded by _____, it was unanimously

RESOLVED, that _____ be reappointed as Member C of the Sustainability Collaborative, and
Frank Owens
BE IT FURTHER

RESOLVED, that the foregoing appointments shall be effective immediately upon the appointee taking and subscribing the oath mandated by section 25 of the New York Town Law and shall expire on December 31, 2018, and

WORK SESSION
ITEM #2

Local Law No. 8 – 2015

This local law shall be known as the "Establishment of a Community Choice Aggregation (Energy) Program in the Town of Mamaroneck" Law.

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

Section 1 – Purpose:

The Town Board declares the policy of the Town of Mamaroneck, like that of the State of New York, is to reduce, and provide a certain amount of control, over the cost of purchasing energy. In order to advance this objective the Town Board finds that it is in the best interest of safety, health and well-being of citizens of the Town of Mamaroneck to create a "Community Choice Aggregation (Energy) Program".

Section 2 – Creation of a new chapter for the Code of the Town of Mamaroneck:

The Code of the Town of Mamaroneck hereby is amended by adding a new Chapter 76 thereto, entitled "COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM," to read as follows:

Chapter 76: COMMUNITY CHOICE AGGREGATION (ENERGY) PROGRAM

§76-1. Legislative Findings; Intent and Purpose; Authority.

- A. It is the policy of both the Town of Mamaroneck and the State of New York to reduce, and provide a certain amount of control, over the cost of purchasing energy for the purpose of economic development, to promote deeper penetration of energy efficiency and renewable energy resources, such as wind and solar, and wider deployment of distributed energy resources as well as to examine the retail energy markets and increase participation of, and benefits for residential and Small Commercial (defined in section 2, below) consumers in the Town of Mamaroneck. Among the policies and models that may offer benefits in New York is community choice aggregation, which allows local governments to determine the default supplier of electricity and natural gas on behalf of its residential and Small Commercial consumers.
- B. The purpose of this Community Choice Aggregation (Energy) Program (defined in section 2, below) is to allow participating local governments, like the Town of Mamaroneck, to procure energy supply service for their residential and Small Commercial citizens, who will have the opportunity to opt out of the procurement, while maintaining transmission and distribution service from the Distribution Utility (defined in section 2, below) that currently supplies them with natural gas or electricity. This Chapter establishes a program that will allow Sustainable Westchester (defined in section 2, below) to put out for bid the total amount of natural gas and/or electricity being purchased by local residential and Small Commercial consumers. Bundled Customers (defined in section 2, below) will have the opportunity to have more control over their overall energy costs, to

spur clean energy innovation and investment, to improve customer choice and value, and to protect the environment, thereby fulfilling the purposes of this Chapter and fulfilling an important public purpose.

- C. The Town of Mamaroneck is authorized to implement this Community Choice Aggregation (Energy) Program pursuant to Section 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law, and State of New York Public Service Commission Case No. 14-M-0564, Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester, Order Granting Petition in Part (issued February 26, 2015) as may be amended, including subsequent orders of the Public Service Commission issued in connection with or related to Case No. 14-M-0564 (collectively, the "Order"). Order shall also mean orders of the Public Service Commission related to State of New York Public Service Commission Case No. 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs (issued December 15, 2014) to the extent that orders related to Case No. 14-M-0224 enable actions by the Town of Mamaroneck not otherwise permitted pursuant to orders related to Case 14-M-0564; provided, however, that in the event of any conflict between orders from Case No. 14-M-0564 and orders from Case No 14-M-0224, orders from Case No 14-M-0564 shall govern this Community Choice Aggregation(Energy) Program.
- D. This Chapter shall be known and may be cited as the "Community Choice Aggregation (Energy) Program Law of the Town of Mamaroneck".

§76-2. Definitions.

For purposes of this Chapter, and unless otherwise expressly stated or unless the context otherwise requires, the terms in this Chapter shall have the meanings employed in the State of New York Public Service Commission's Uniform Business Practices or, if not so defined there, as indicated below:

Bundled Customers means residential and Small Commercial consumers of electricity or natural gas ("fuels") who are purchasing fuels from the Distribution Utility that currently supplies natural gas or electricity within the Town of Mamaroneck.

Small Commercial means non-residential customers as permitted by the Order.

Community Choice Aggregation (Energy) Program or CCA Program means a municipal energy procurement program, which replaces the Distribution Utility that currently supplies natural gas or electricity within the Town of Mamaroneck as the default Supplier for all Bundled Customers within the Town of Mamaroneck.

Distribution Utility means the owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission.

Public Service Commission means the New York State Public Service Commission.

Suppliers mean energy service companies (ESCOs) that procure electric power and natural gas for Bundled Customers in connection with this Chapter or, alternatively,

generators of electricity and natural gas or other entities who procure and resell electricity or natural gas.

Sustainable Westchester means the not-for-profit organization comprised of member municipalities in Westchester County, New York that utilize that name.

§76-3. Establishment of a Community Choice Aggregation (Energy) Program.

- A. A Community Choice Aggregation (Energy) Program hereby is established by the Town of Mamaroneck, whereby it intends to work together with Sustainable Westchester to implement the CCA Program to the full extent permitted by the Order, as set forth more fully herein. The role of the Town of Mamaroneck under the CCA Program involves the aggregating of the electric and/or natural gas supply of its residents and the entering into a contract with one or more Suppliers for supply and services. Under the CCA Program, the operation and ownership of the utility service shall remain with the Distribution Utility.
- B. The Town of Mamaroneck's purchase of energy supply through a CCA Program is not intended to constitute either the purchase of a public utility system, or the furnishing of utility service. The Town of Mamaroneck will not take over any part of the electric or gas transmission or distribution system and will not furnish any type of utility service, but instead will limit its activities to negotiating with Suppliers on behalf of participating residential and Small Commercial customers.
- C. In order to implement the CCA Program, the Town Board of the Town of Mamaroneck will adopt one or more resolutions that outline the process of and conditions for participation in the CCA Program, including but not limited to signing a contract for a compliant bid with one or more Suppliers, all as consistent with this Chapter and the Order.
- D. The Town of Mamaroneck recognizes that the Public Service Commission supervises retail markets and participants in these markets through legislative and regulatory authority and the Uniform Business Practices, which includes rules relating to the eligibility of participating ESCOs, the operation by which ESCOs provide energy services, and the terms on which customers may be enrolled with ESCOs. It will conduct the CCA Program in a manner that conforms to those rules and acknowledges the Public Service Commission's role in this area.

§76-4. Procedures for Eligibility; Customer Data Sharing.

- A. As permitted by the Order, the Town of Mamaroneck may request from the Distribution Utilities aggregated customer information by fuel type and service classification on a rolling basis.
- B. Sustainable Westchester, on behalf of the Town of Mamaroneck, shall issue one or more requests for proposals to Suppliers to provide energy to participants and may then award a contract in accordance with the CCA Program.

- C. Sustainable Westchester, or the Town of Mamaroneck if it so chooses, will then request individual customer data from the Distribution Utility in accordance with the CCA Program.
- D. Sustainable Westchester, or the Town of Mamaroneck if it so chooses, and the selected Supplier will then notify Bundled Customers of the contract terms and their opportunity to opt out of the CCA Program.
- E. In accordance with and for purposes of the Order, the Distribution Utility operating within the Town of Mamaroneck will provide to Sustainable Westchester, and to the Town of Mamaroneck if it so chooses, aggregate and customer-specific data (including usage data, capacity tag obligations, account numbers, and service addresses) of all Bundled Customers in the Town of Mamaroneck not enrolled with an ESCO.
- F. Sustainable Westchester and the Town of Mamaroneck will protect customer information as required by law, subject to the Order and the limitations of the law, including but not limited to the New York State Freedom of Information Law.

§76-5. Choice of Energy Supplier; Opt-Out Notice and Procedure.

- A. The Town of Mamaroneck independently or in conjunction with the Supplier chosen under the CCA Program will notify the residential and Small Commercial consumers of fuels in the Town of Mamaroneck, by letter, and other means of communication decided upon by the Town Board of the Town of Mamaroneck, of the decision to establish the CCA Program, of the contract terms with an ESCO, and of the opportunity to opt out of the CCA Program.
- B. The letter notice will be sent to each customer at the address provided by the Distribution Utility and will explain the CCA Program and the material provisions of the ESCO contract, identify the methods by which the customer can opt out of the CCA Program, and provide information on how the customer can access additional information about the CCA Program. The Supplier chosen under the CCA Program will present a draft of the letter notice to the Town of Mamaroneck for its review and approval before sending it to the residential and Small Commercial customers of fuels in the Town of Mamaroneck.
- C. The residential and Small Commercial customers of fuels in the Town of Mamaroneck will have twenty (20) days from the date that the letter notice is sent to opt out of the CCA Program.
- D. CCA Program Bundled Customers, upon enrollment, will receive a welcome letter that will explain the customers' options for canceling the enrollment if they believe they were enrolled incorrectly or otherwise decide to withdraw from the CCA Program in favor of another Supplier. The welcome letter also will explain that residential customers are entitled to the added protection of the mandated Three (3) Day rescission period as detailed in Section 5(B)(3) of the Uniform Business Practices.

§76-6. Verification and Reporting.

- A. Sustainable Westchester shall be responsible for filing an annual report with the Public Service Commission, which identifies the number of customers enrolled in the CCA Program by municipality and customer class, the number of customers who returned to utility service or service with another Supplier during the reporting period, and the average cost of commodity supply by month for the reporting period.

Section 3 - Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law which may be implemented without the invalid or unconstitutional provisions.

Section 4 – Effective Date:

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

TB meeting June 23, 2015



Town of Mamaroneck

Town Center

740 West Boston Post Road, Mamaroneck, NY 10543-3353

OFFICE OF THE TOWN ADMINISTRATOR

TEL: 914/381-7810

FAX: 914/381-7809

townadministrator@townofmamaroneck.org

Memorandum

To: Supervisor & Town Board

From: Stephen V. Altieri

Subject: Community Choice Aggregation Memorandum of Understanding

Date: January 15, 2016

Attached please find a full copy of the Community Choice Aggregation Memorandum of Understanding and a copy of the petition filed with the Public Service Commission permitting the program. At our worksession on Wednesday, January 20th, Bill Maker will have completed his review of the agreement so that we can discuss how to move forward.

⊗ See additional
PDF

Stephen V. Altieri
Town Administrator

This Memorandum of Understanding is entered into by and between:

 Sustainable Westchester, Inc, a New York not-for-profit corporation, and
 City/Town/Village of _____, a local government member of Sustainable Westchester,
Inc.

1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: “The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order...” (Attached as Exhibit 1.)
- a. The **City/Town/Village of _____** has adopted local legislation to enable Community Choice Aggregation and a local resolution expressing the intent to participate in Community Choice Aggregation (“Intent-to-Participate Resolution”).
- b. As a member of Sustainable Westchester in good standing, the **City/Town/Village of _____** wishes to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.
- c. Sustainable Westchester will serve as Program Manager under the terms of the Electric Service Agreement (attached as Exhibit B) on behalf of any member municipality that executes the Electric Service Agreement and otherwise qualifies for the Program, thereby creating a new, shared service among the participating cities, towns and villages of Westchester County.

2. Definitions:

- a. **Bundled Customers** – Residential and Small Commercial customers of electricity or natural gas (“fuels”) who are purchasing the fuels from the Distribution Utility.
- b. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the default Supplier for all Bundled Customers within the Participating Municipality, as defined in the February Order.
- c. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) that procures electric power and natural gas for Bundled Customers in connection with this CCA Program.
- d. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in the Intent-to-Participate Resolution and ESA. Compliant bids meet one of the following criteria:
 - i. the default price is guaranteed to be consistently less than the Distribution Utility price for the same customer class, for the same period; or
 - ii. the default price is fixed at a level that is less than the average utility price for the same commodity, for the same customer class, over the Preceding Twelve Month Period (as defined below); or
 - iii. the default price is at first set at a level that is less than the average utility price for electricity, for the same customer class, over the Preceding Twelve Month Period, and only floats upward by less than twenty-five percent (25%) of the price increases implemented by the utilities

- e. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
 - f. **Electric Service Agreement (ESA):** The Electric Service Agreement that contains all the terms and condition appertaining the energy procurement request published by the Program Manager on behalf of the Participating Municipalities. (Attached as Exhibit B.)
 - g. **February Order:** February 26, 2015 “Order Granting Petition in Part” issued by PSC in Case 14-M-0564, “Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester.” (Attached as Exhibit 1.)
 - h. **Independent Review:** An assessment of each Competitive Supplier's response by an independent accountant or other qualified consultant that is selected by the Program Manager (as defined below), to be undertaken on behalf of and paid for by the Program Manager. For each Competitive Supplier's response, such assessment will include a determination of (i) the creditworthiness of the Competitive Supplier or adequate documentation of alternative credit arrangement that is at least as secure as a credit-worthy Competitive Supplier, and (ii) compliance with respect to pricing, as outlined in these definitions and in each Intent-to-Participate Resolution (as defined below).
 - i. **Intent-to-Participate Resolution:** Local resolution adopted by Municipality authorizing their participation in the Program and defining the conditions of that participation (e.g. pricing compliance).
 - j. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester Inc, which has adopted the applicable local legislation and Intent-to-Participate Resolution for the Community Choice Aggregation Program.
 - k. **Preceding Twelve Month Period:** For purposes of evaluating a Compliant Bid, the most recent twelve month period for which the applicable information is available.
 - l. **Program Manager:** Sustainable Westchester, Inc, a non-profit corporation of which the Participating Municipality is a member, authorized by the Public Service Commission per Order for Case 14-M-0564 “to undertake a Community Choice Aggregation demonstration project.”
 - m. **Public Service Commission:** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission (PSC).
3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **City/Town/Village of _____ (hereafter, the “Participating Municipality”)** in a Community Choice (Energy) Aggregation Program (hereafter, the “Program”) that will be managed on its behalf by **Sustainable Westchester, Inc (hereafter, the “Program Manager”)**, under the terms outlined in the attached Electric Service Agreement (Attached as Exhibit 2);
 - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the attached Electric Service Agreement in the event they execute the agreement as outlined in 3(c), below

- c. To affirm that the Participating Municipality and Program Manager agree to execute the Electric Service Agreement, subject to the conditions of review and approval outlined in 4(c)(i), 4(c)(ii), 4(c)(iii), 5(a)(i), 5(a)(ii), and 5(a)(iii), outlined below.
4. **Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester Inc agrees to perform all duties outlined in the Electric Service Agreement and, prior to execution of that agreement, Program Manager agrees to:
 - a. Provide the involved agencies and parties to the February Order, such as but not limited to the Public Service Commission or Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
 - b. Manage the energy procurement bidding process including:
 - i. the identification and notification of potential firms seeking to be the Competitive Supplier,
 - ii. the Request for Proposals process from preparation of the content to the publication of the Request and management of firms responding to the Request,
 - iii. the preparation of the Electric Service Agreement that will be included in the Request,
 - iv. the acceptance and secure opening of the responses to the Request, and
 - v. the organizing and procuring of the Independent Review,all in a manner that is transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
 - c. Sign the Electric Service Agreement in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the Electric Service Agreement by the Independent Review, or
 - ii. the Competitive Supplier arranges alternative credit terms that are, at a minimum, as secure as those achieved with a creditworthy Supplier as deemed by the Independent Review, and
 - iii. the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed a Compliant Bid as defined in Section 2, above, by an Independent Review; and
 - d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.
5. **Roles and responsibilities of the Participating Municipality:** As a Participating Municipality, the City/Town/Village of _____ agrees to:
 - a. Sign the Electric Service Agreement in a timely fashion subject to the conditions that:
 - i. the Competitive Supplier is deemed creditworthy for the duration of the Electric Service Agreement by the Independent Review, or
 - ii. the Competitive Supplier arranges alternative credit terms that are, at a minimum, as secure as those achieved with a creditworthy Competitive Supplier as deemed by the Independent Review, and
 - iii. such Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed a Compliant Bid by the Independent Review.

Community Choice Aggregation Memorandum of Understanding (last revised Jan 13, 2016)

- 6. **Term:** Memorandum of Understanding shall expire on the earlier of April 30, 2017 or the date on which the Electric Service Agreement is signed by all three counterparties to the Electric Service Agreement.
- 7. **IN WITNESSETH WHEREOF**, the parties hereto have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

City/Town/Village of _____
Authorized Official: _____
Signature Printed Name and Title: _____

Address: _____
Telephone(s): _____
E-Mail Address: _____
Address for Notices: _____

Sustainable Westchester Inc
Authorized Official: _____
Signature Printed Name and Title: _____

Address: _____
Telephone(s): _____
E-Mail Address: _____
Address for Notices: _____

- Attachments:**
Exhibit 1, Public Service Commission Order for Case 14-M-0564 (February 2015)
Exhibit 2, Electric Service Agreement (1/04/2016)

EXHIBIT 1

Public Service Commission Order for Case 14-M-0564

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public
Service Commission held in the
City of Albany on February 26,
2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre

COMMISSIONER EXCUSED:

Diane X. Burman

CASE 14-M-0564 - Petition of Sustainable Westchester for
Expedited Approval for the Implementation of
a Pilot Community Choice Aggregation Program
within the County of Westchester.

ORDER GRANTING PETITION IN PART

(Issued and Effective February 26, 2015)

BY THE COMMISSION:

BACKGROUND

In a Petition filed on December 23, 2014, Sustainable
Westchester, Inc. (SW or Petitioner) requested approval to
implement a demonstration community choice aggregation (CCA)
program within the County of Westchester. The Petitioner asked

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that Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation (the Utilities) be required to provide certain customer information to Petitioner and that it be relieved from compliance with certain provisions of the Uniform Business Practices (UBP). In order for it to expeditiously implement the demonstration CCA program and take advantage of historic low electricity and natural gas prices, the Petitioner concluded, action on the Petition should be expedited.

PUBLIC NOTICE AND COMMENTS

In conformance with State Administrative Procedure Act (SAPA) §202(1), notice of the Petition was published in the State Register on January 7, 2015 (SAPA No. 14-M-0546SP1). The SAPA §202(1)(a) period for submitting comments in response to the notice expired on February 23, 2015. A comment was received from the Joint Utilities.¹ No other comments were received.

THE PETITION

Sustainable Westchester is a New York State not-for-profit corporation whose members include several municipalities in Westchester County.² According to SW, it has been working

¹ Consolidated Edison Company of New York, Inc. (Con Edison), Orange and Rockland Utilities, Inc. (O&R), Central Hudson Gas & Electric Corporation (Central Hudson), National Fuel Gas Distribution Corporation (National Fuel), The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), KeySpan Gas East Corporation d/b/a National Grid (KEDLI), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E).

² Sustainable Westchester was organized in 2010 as Northern Westchester Energy Action Consortium, Inc. (NWEAC). In 2014, NWEAC merged with the Southern Westchester Energy Action

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toward achieving CCA for its members for more than two years, and several of its member municipalities have already adopted resolutions in support of CCA, including County of Westchester, the Cities of Peekskill and Yonkers, the Towns of Bedford, Lewisboro, North Castle, North Salem, Ossining, and Somers, and the Village of Pleasantville. These resolutions support implementation of a CCA program 1) whereby individual consumers are free to opt-out of CCA offerings and 2) whereby municipalities may execute a CCA contract under which residential and small commercial customers who are not currently served by an Energy Services Company (ESCO) are enrolled with an ESCO for the provision of gas and/or electricity at a rate which either saves them money, is a fixed rate contract, or is a contract for a green product.

According to SW, its CCA Program is intended to include both residential and commercial customers and to permit aggregation of both electric and natural gas purchases. As municipalities agree to participate in the CCA pilot, SW proposes that they be permitted to request on a rolling basis aggregated customer information, by fuel type, service classification, and capacity tag, from the distribution utilities.³ The relevant utility would be required to provide such information to SW within ten days of receiving SW's written request, free of charge, or at most for a nominal fee.

SW expects to issue an RFP to energy suppliers and/or

Consortium (SWEAC), and the combined entity was named Sustainable Westchester, Inc.; members include forty towns, villages and cities in Westchester County.

³ Westchester County is served in part by Con Edison and in part by NYSEG.

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independent power producers on or about 90 days after the date of the Commission Order in this proceeding, with a response to the RFP due within ten days later. Within 20 days of issuance of the RFP, SW expects to issue an award to one or more suppliers and notify them of any surcharge required to support administration, legal support, communications needs, and the build-up of a fund intended to support energy efficiency and control retrofits, distributed generation, enhanced renewable generation, and other permissible measures that SW reasonably deems appropriate.

SW proposes that once the award is issued, it will notify the appropriate utility, and the utility will then provide notifications to "bundled customers" of the contract terms and of their opportunity to opt-out within ten days. The utility notification would include the most recent updated price information and the contract period, terms for making prospective price changes, exit costs (if any), name of supplier, and any other permitted terms or features that SW deems are appropriate. Within five days following the ten day opt-out deadline, SW maintains, the utility should provide precise usage data and capacity tag obligations, account numbers, and service addresses of all customers who have not opted out of the CCA to the selected ESCOs.

SW anticipates that it will request of the utilities permission to insert communication material into utility-issued bills. SW indicates that it prefers free movement of customers out of the awarded contract, unless an upgrade has been financed on-bill. SW also proposes that an "Open Underwriting Resource Service" fund (OURS) be created to support upgrades over-and above those supported by state programs, as well as other energy efficiency investments, distributed generation, distributed or merchant renewable generation, control systems, microgrid

technology or marketing measurement technology, or other innovative technologies or business strategies.

SW affirmed that it will abide by strict policies for protection of the confidentiality of personally identifiable information, intended to approach, mimic, or surpass standards applicable to utilities and ESCOs. SW also indicated that it intends to offer on-bill financing in the future but did not provide details. SW proposes a four year duration for its CCA Program, a time frame it believes is sufficient to incorporate into the Program newly-developed renewable resources.

SW supported its request for expedited Commission action by stating that it was involved in an extensive and open consultation process with many stakeholders throughout a more than two-year process in which the group had sought and gained New York State Assembly and Senate passage of enabling legislation for a Westchester County demonstration CCA project.⁴ SW's view is that the legislative process it participated in, which included multiple public hearings in more than ten municipalities, discussions with utility staff, continuing consultation with ESCOs and with environmental action groups, and consistent engagement with consumer advocates, academic experts, and Community Choice Aggregators throughout the United States, obviates the need for a further comment period.

COMMENTS

Although the Petition would only affect Con Edison and NYSEG, the Joint Utilities submitted comments because authorization of a pilot could have an impact on the development

⁴ The Legislation was subsequently vetoed by Governor Andrew Cuomo.

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of other CCA programs throughout New York. The Joint Utilities believe that the development of CCA programs requires careful consideration and analysis. The Joint Utilities explain that CCA programs should be implemented in a way that preserves existing retail access processes, including Electronic Data Interchange (EDI), and is consistent with the Staff White Paper and the Joint Utilities' comments in the Generic CCA Proceeding,⁵ which envision the municipality as the entity to inform, educate, and administer a CCA program.

The Joint Utilities express a preference for customer opt-in CCA programs and stress that, if the Commission does determine that opt-out is acceptable practice for CCA programs, the Commission should also ensure that adequate customer protections are in place to avoid unintended switches of commodity suppliers. The Joint Utilities also argue that a detailed CCA program plan should be filed by the municipality and approved by the Commission prior to implementation. The Joint Utilities recommend that the CCA demonstration be limited to one municipality and to residential customers only so that municipalities, customers, and the utilities all can understand the impacts associated with the changes to existing business models and to inform statewide implementation of CCA programs.

The Joint Utilities state that the SW proposal would require utility ratepayers to shoulder significant costs for the implementation of the proposed CCA program without any payment for such service. For instance, the Joint Utilities explain, the Petition requests that the utilities notify residents of the municipality's decision to establish a CCA program, to inform

⁵ See Case 14-M-0224, Community Choice Aggregation Programs, Order Instituting Proceeding and Soliciting Comments (issued December 15, 2014) (CCA Initiation Order).

them of the municipality's contract terms with an ESCO, and to inform them of the opportunity to opt-out of the CCA program. The Petition also requests that utilities include SW communication materials in utility bills. According to the Joint Utilities, these provisions are contrary to the process envisioned in the Staff White Paper and the processes used in other jurisdictions with established CCA programs, where the municipality that has chosen to implement CCA is also responsible for informing and educating customers and administering the CCA. The Joint Utilities further maintain that these provisions are also inconsistent with the existing utility-ESCO relationship and the Commission-approved Uniform Business Practices, and that the provisions fail to recognize that the utilities do not have access to ESCO/customer contracts and thus cannot and should not notify residents of their terms.

Pointing specifically to Section 9 of the Petition, which seeks to impose obligations on the utility for provision of data and notification of customers at no, or minimal cost, and within ten days of a request from SW, the Joint Utilities express the concern that SW fails to recognize that any data or information, whether aggregated or customer-specific, must be carefully developed by the utilities and reviewed for accuracy. Additionally, the Joint Utilities explain that utilities' customer data generally contains the customer's address, ZIP code, municipality, and tax district. Due to the way municipality boundary lines are drawn, however, a customer may live in one town or village while the ZIP code is identified with another municipality, and may be served by a separate tax district.

Consequently, the Joint Utilities contend, while the utility can provide data, SW or the municipality must review that data and determine which customers would be eligible for the

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demonstration project. Additionally, the Joint Utilities state, SW or the municipality must reconcile any differences between municipal records and the utilities' customer data. For example, a customer may place their electric and/or gas service under the name of their spouse, who may or may not have a different surname, while the tax records show the name of the other spouse as the property owner. In these situations, the Joint Utilities explain, SW must consider the data and contact the customer to resolve any data discrepancies, because the utility is obliged to place the service in the name of the appropriate applicant.

SW also requests that the utility provide via EDI the customers' consumption, capacity tag obligation, account numbers, and service addresses for all customers who have not opted out. The Joint Utilities believe that the municipality given access to personally-identifiable information should be required to obtain cyber-insurance and be held to such data security riders as may be necessary in order to protect the customers and indemnify the utility.

Finally, the Joint Utilities state, the Petition lacks the detail necessary to fully evaluate the proposed CCA program. For instance, the Joint Utilities note, SW seeks to establish an "energy efficiency tariff" and "demand response and micro-grid development/financing" but provides little to no detail on these proposals. If the Commission approves the development of a CCA demonstration project, consistent with the Joint Utilities' comments in the Generic CCA Proceeding, the Joint Utilities urge the Commission to require SW to develop and file a detailed CCA plan with the Commission for approval. This would allow Staff and interested parties to review the plan in detail.

DISCUSSION AND CONCLUSION

The Commission recently commenced, in the CCA Initiation Order, a proceeding to examine implementation of CCA in New York, and sought comments on a number of issues related to CCA, in advance of a determination regarding whether action should be taken to enable CCA programs in New York. At the same time, in a Memorandum and Resolution on Demonstration Projects, issued on December 12, 2014 in Case 14-M-0101, the Commission expressed interest in utilities and third parties working together to develop potential demonstration projects. Although the Commission is not prepared to act on the Generic CCA Proceeding at this time, in light of the Memorandum and Resolution on Demonstration Projects, it is appropriate to consider a demonstration or pilot CCA program.

CCA programs can serve as an opportunity to introduce larger numbers of customers to retail competition with the safeguards, credibility, and accountability that an energy procurement program administered by a local government can provide. For the reasons provided in the CCA Initiation Order, and consistent with the Memorandum and Resolution on Demonstration Projects, it is appropriate to approve a CCA demonstration project, in order to gain experience with CCA programs and explore their potential benefits for consumers, municipalities, and the utility system. However, the SW Petition lacks the detail necessary to fully evaluate some of the proposed provisions of its CCA program. For now, a determination will not be made on issues related to the establishment of an energy efficiency tariff, demand response and micro-grid development and financing, the insertion by municipalities of communication material into utility-issued bills, or the Open Underwriting Resource Service fund.

To initiate this demonstration CCA project, the

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utilities must provide aggregated customer data for residential and small commercial customers who are not currently taking service from an ESCO to the municipalities that have been properly authorized to implement the CCA pilot. Rather than the review and approval process the Joint Utilities propose, a municipality that chooses to join the CCA pilot shall furnish a letter to Department of Public Service Staff (DPS Staff) certifying that a public outreach campaign has been conducted by the municipality or its designee. The municipal representative shall also certify that the municipality has the requisite authority to implement CCA. To assist in restricting the availability of the data to circumstances where it is warranted, the utility will only provide data to the municipality or its consultant after DPS Staff notifies the utility that an appropriate letter has been received. The aggregated customer data, which should include aggregated usage and capacity tag, shall be provided within twenty days of the notification from DPS Staff.

The utilities maintain they will incur costs in aggregating and providing the data, but have not quantified those costs. Consequently, Con Edison and NYSEG shall make a filing within ten days of the date of this Order that identifies the costs the utility will incur and justifying any charges it intends to impose for providing the data.

Once an ESCO supplier has been selected, municipalities will also require information in order to notify customers. Upon selection of an ESCO the municipality or its consultant should request from the utilities the information necessary to send the opt-out letter, including, at a minimum, customer names, addresses, and account numbers. Discrepancies between the customer information provided by the utility and

similar information retained by the municipality should be resolved by the municipality.

Notwithstanding the Joint Utilities' assertion that cyber insurance is necessary for this CCA pilot proposal, it will not be required at this time. The municipalities currently possess much of the information that the utility will be providing, and should be expected to protect personally identifiable customer information that is confidential.

Moreover, SW, its municipal members, and any municipal contractors shall agree to take all reasonable steps to protect that information, employing methods at least as protective as those used for other personally identifiable information possessed by the municipality. In addition, SW, its municipal members, and any municipal contractors shall agree that they will not permit the use of personally identifiable information received under this Order for any purpose other than the administration of the programs authorized here. Furthermore, they shall agree not to share that personally identifiable information received under this Order except as necessary for the administration of the program and only with other entities that agree to appropriately protect the data and use it only for the administration of programs authorized here.

It is the municipality's responsibility, however, to notify its residents and small commercial customers of its decision to establish a CCA Program, to inform them of the contract terms with an ESCO, and to inform them of the opportunity to opt-out of the CCA program. The municipality could send the opt-out letter itself or provide a co-branded opt-out letter from the municipality and the ESCO that will be providing the services. The letter should, at a minimum: explain community choice aggregation and the ESCO contract in detail; identify the methods by which the customer can opt-out of the CCA

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Program; and provide information on how the customer can access additional information about CCA on the municipality's website. A draft standard form letter shall be submitted to DPS Staff for review before it is mailed.

Further, the ten day opt-out period SW proposes is inadequate. The CCA Initiation Order asked if twenty days was an adequate opt-out period. In response, two ESCOs, Energy Next and Constellation New Energy, recommended a fourteen day period based on programs in other states. A number of other parties recommended longer opt-out periods. Therefore, for this pilot project, the opt-out period shall be at least twenty days.

Finally, as with all customers enrolled in retail access programs by ESCOs, CCA participants, upon enrollment, will receive a welcome letter from the distribution utility that will explain the customers' options for canceling the enrollment if they believe they were enrolled incorrectly. Residential customers are entitled to the added protection of the mandated three-day rescission period, as detailed in Section 5(B)(3) of the Uniform Business Practices.

The Commission has had a longstanding policy, underlying the Uniform Business Practices and implementation of retail choice programs, that affirmative customer consent is required in order for a customer to change suppliers. However, the economies of scale and bargaining power that large-scale opt-out aggregation programs create are expected to translate into tangible benefits for customers. In order to help ensure costs savings or rate stability for CCA participants, the Uniform Business Practices are waived to the extent necessary to allow for the enrollment of customers and transmittal of customer information by the utility to the ESCO without express customer consent only for this specific CCA demonstration program.

As to the details of the agreement between the ESCO

and the municipality, the municipalities are in the best position to choose a product for their citizens. In turn, their citizens can opt out of the program or leave at a later time, ensuring that customers are protected.

SW, however, will not be authorized at this time to implement its "Open Underwriting Resource Service" (OURS) fund, which would be intended for the support of various distributed energy resources. CCA participants will continue to contribute to the state-mandated energy efficiency and clean energy funds through distribution charges. Therefore, at this time, SW is prohibited from collecting the surcharges identified in its Petition for the OURS fund or other programs.

However, the administrative costs of operating the program, including legal and communications expenses, may be recovered as part of the energy charges billed to customers. To the extent that any order issued in the Generic CCA Proceeding will permit the creation of an OURS fund or similar program, this Order does not restrict SW from implementing such a program. Alternately, SW may submit a further petition providing additional detail and justification on proposed programs for consideration.

SW proposes that the pilot be approved for a period of four years. While the Commission will not interfere with the terms of the agreement between the municipality and the ESCO, it would be premature to commit to a four year pilot at this time. Instead, SW is directed to file an annual report, which identifies: the number of customers enrolled in CCA by municipality and customer class; the number of customers who returned to utility service or service with another ESCO during the reporting period; and, the average cost of commodity supply by month for the reporting period. The first report should be filed thirteen months after the CCA program is implemented

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through commencement of service of customers by the selected ESCO. In addition, any Order issued by the Commission in the Generic CCA Proceeding will govern the CCA pilot program authorized here except as otherwise noted in that Order.

The Commission orders:

1. The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order, and is otherwise denied.

2. To facilitate the Community Choice Aggregation demonstration project authorized in Ordering Clause No. 1, Uniform Business Practices Sections 4(B)(1)-(3), 5(B)(1), 5(D)(1) and (4), and 5(K) are suspended for municipalities participating in the demonstration project and ESCOs and utilities engaging with those municipalities, to permit: (a) transfers of aggregated and customer-specific information from utilities to Sustainable Westchester, Inc., its municipal members, and municipal contractors under the terms and timeframes described in the body of this Order; and, (b) the switching of customers currently receiving supply service from the utility to ESCO supply service without affirmative consent consistent with the discussion in the body of this Order.

3. Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation are directed to provide aggregated and customer-specific data to Sustainable Westchester, Inc. its municipal members, and municipal contractors under the terms and timeframes described in the body of this Order.

4. Consolidated Edison Company of New York, Inc. and New York State Electric & Gas Corporation are directed to make a filing within ten days of the issuance of this order identifying

and justifying their charges to Sustainable Westchester, Inc. for providing aggregated customer data.

5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.

6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued.

7. Sustainable Westchester, Inc. will file an annual report as described in the body of this Order, with the first report due thirteen months after the commencement of service to customers.

8. The Secretary in her sole discretion may extend the deadlines set forth in this Order. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to any affected deadline.

9. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

Exhibit 2

Electric Service Agreement (last revised 1/13/2016)

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RECITALS

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

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

WHEREAS, the Westchester pilot program is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

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

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

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

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

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

WHEREAS, Competitive Supplier has submitted offers to provide two distinct electric supply products and two corresponding pricing levels, (1) a Default Product and price, and (2) a 100% Renewable Clean Power Product and price;

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

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

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

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

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

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

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

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

1.2 Clean Power Product – 100% Renewable power supply product offered to Participating Customers on an opt-in basis.

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

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

1.5 Competitive Supplier – An entity duly authorized to conduct business in the State of New York as an ESCO.

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

1.7 Default Product – Traditional generation mix, meeting the minimum Renewable Portfolio Standards for electric power established by New York State.

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

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

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

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

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

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

1.14 ESA - This Electric Service Agreement.

1.15 Environmental Disclosure Label – Competitive Suppliers selling electricity are required to provide customers with periodic Environmental Disclosure Labels in plain language. It provides information on the types of fuels used to generate electricity, air emissions resulting from generating electricity, and a comparison of those emissions to a statewide average.

1.16 February Order – February 26, 2015 “Order Granting Petition in Part” issued by PSC in Case 14-M-0564, “Petition of Sustainable Westchester for Expedited Approval for the

Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester.”

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

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

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

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

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

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

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

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

1.25 New Consumers – Residential and small consumers of electricity that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality.

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

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

1.28 Participating Consumers - Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or are New Consumers.

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

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

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

1.32 Program - Sustainable Westchester Community Choice Aggregation Program.

1.33 Program Manager – Sustainable Westchester, Inc., a not-for-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

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

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

1.36 Retail Price - As set forth in Exhibit A.

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

1.38 Term - As defined in Article 4.1.

1.39 Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights. Issued by the New York State Public Service Commission (Case 98-M-1343), December 2015.

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Full-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Full-Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise. Competitive Supplier further recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

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

The Municipality shall specifically authorize the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Distribution Utility. Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that

Competitive Supplier or any of its Associated Entities makes in the provision of Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the February Order and Local Law for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

Municipality specifically represents that it has exercised due diligence to review and have fully complied with all relevant regulations of the Attorney General of the State of New York and the New York Department of State in order to fulfill the requirements to enter into a Local Law.

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

2.4 CONDITIONS PRECEDENT

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

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

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

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to inform any such vendor of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

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

3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the February Order, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Default Service by the Distribution Utility; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

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

3.3 CONSUMER AWARENESS

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

3.4 ENROLLMENT

3.4.1 Participating Consumers –All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 20-day period specified in the Local Law. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

3.4.2 New Consumers - If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the

Program. These New Consumers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility rules.

3.4.3 Eligible Consumers Opting Out - At any time during this ESA, Eligible Consumers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Full-Requirements Power Supply to such Eligible Consumers at a price determined by the then-prevailing market conditions, as defined in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

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

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

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read date after _____, unless terminated earlier under Article 4.2 below ("Term").

4.2 TERMINATION

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

a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Full-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or

- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- d) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

4.3 OBLIGATIONS UPON TERMINATION

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

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

4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

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

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available to it.

5.2 CUSTOMER SERVICE ACCESS

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

5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an

uninterrupted flow of firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

In any event, should either Program Manager or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumer at the NYISO strip clearing price for the appropriate zone (H or I), in which the capacity tag reduction is certified by appropriate party.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual

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

5.7 COMMUNICATION OF INSERTS AND MESSAGES

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

5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive

Supplier shall provide Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month, for customers who have agreed to have their personal information provided to Program Manager or to Municipality.

5.9 COMPLIANCE WITH LAWS

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

5.10 CONSENT

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

ARTICLE 6 ROLE OF THE MUNICIPALITY

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

Municipality shall conduct outreach to the community in addition to the program notification letter, which will be delivered at the Competitive Supplier's expense. Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

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

7.2 PROGRAM MANAGER FEE

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

7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House (“ACH”) (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the prior calendar month. For example, full payments received in January will be paid by the end of February. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail. Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

7.4 INDEPENDENT CONTRACTOR

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

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

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

8.2 OBLIGATION TO SERVE

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

8.3 METERING

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

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

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

8.4.2 Billing and Payment

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

8.4.3 Regional and Local Transmission

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

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE FEBRUARY ORDER

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

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the February Order and to all related Orders of Case 15020/14-M-0564 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

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

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

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

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

12.1.2 Consumer-Related Data

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

12.1.3 Standard of Care

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

12.2 POWER SUPPLY REPORT

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

12.3 BOOKS AND RECORDS

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

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. ~~The Municipality shall treat any reports and/or filings received from Competitive Supplier as confidential information subject to the terms of Article 15.~~ Competitive Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

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

13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive

relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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

14.2 NOTICE OF INDEMNIFICATION CLAIMS

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

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

14.4 DUTY TO MITIGATE

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

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

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

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

15.2 BY THE MUNICIPALITY

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

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

15.3 BY THE PROGRAM MANAGER

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

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

ARTICLE 16 INSURANCE

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

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

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

ARTICLE 17 REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s), or at the sole discretion of Municipality or Program Manager, this ESA may be terminated under Article 4.2.

17.2 NEW TAXES

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

ARTICLE 18 MISCELLANEOUS

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Competitive Supplier shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. Notwithstanding the above, any assignment, of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least 120 days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

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

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

18.3 NOTICES

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

If to Competitive Supplier:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
c/o Village Manager of Ossining
16 Croton Avenue
Ossining NY 10562

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

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

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

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

18.6 FORCE MAJEURE

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

18.7 EXPENSES

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

18.8 NO JOINT VENTURE

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

18.9 JOINT WORK PRODUCT

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

18.10 COUNTERPARTS

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

18.11 WAIVER

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

18.12 ADVERTISING LIMITATIONS

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

18.13 PRESS RELEASES

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

18.14 HEADINGS AND CAPTIONS

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

18.15 SURVIVAL OF OBLIGATION

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

19 REMEDIES

19.1 GENERAL

Subject to the limitations set forth in Article 18.19.2 below and Article 4, the Municipality and the Competitive Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

19.2 LIMITATIONS

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

//Signatures Follow//

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

COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

**EXHIBIT A-Part 1
PRICES AND TERMS**

**SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM
DEFAULT PRODUCT**

Full-Requirements Price by Rate Classification for all Participating Consumers commencing service on the first Consumer meter-read date after _____ .

Rate Class	Price per kWh
Residential	
Small Commercial	

[Final Prices will be determined prior to the beginning of the respective pricing periods]

Terms for System Supply Service

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

Start-Up Service Date: Full-Requirements retail power supply will commence at the prices stated above as of Participating Consumer's first meter read dates after _____.

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

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

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

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

Community Choice Aggregation Memorandum of Understanding (last revised Jan 13, 2016)

New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above shall be served at a price of \$ ____ plus the applicable adder for each rate class outlined below.

Rate Class	Adder per kWh
Residential	
Small Commercial	

**EXHIBIT A-Part 2
PRICES AND TERMS**

**SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM
100% RENEWABLE CLEAN POWER PRODUCT**

Full-Requirements Price for 100% Renewable Power Supply by Rate Classification for all Participating Consumers commencing service on the first Consumer meter-read date after _____.

Rate Class	Price per kWh
Residential	
Small Commercial	

[Final Prices will be determined prior to the beginning of the respective pricing periods]

Terms for System Supply Service

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

Start-Up Service Date: 100% Renewable Full-Requirements retail power supply will commence at the prices stated above as of Participating Consumer's first meter read dates after _____.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Full-Requirements Power Supply mix in an amount equal to 100% of all power supplied under this exhibit.

Term: The period of delivery of 100% Renewable Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

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

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

Community Choice Aggregation Memorandum of Understanding (last revised Jan 13, 2016)

New Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above shall be served at a price of \$ ____ plus the applicable adder for each rate class outlined below.

Rate Class	Adder per kWh
Residential	
Small Commercial	

EXHIBIT B
TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA SUMMARY

Rate Code	
Rate Name	
Municipality	
# of Default Accounts of Eligible Consumers	
	kWh
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

**EXHIBIT C
PAYMENT SCHEDULE**

<p><u>PROGRAM MANAGER GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>	<p><u>MUNICIPALITY GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>	<p><u>SUPPLIER GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>
<p><u>CONSULTANT LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>	<p><u>MUNICIPALITY LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>	<p><u>SUPPLIER LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>
<p><u>CONSULTANT BANK INFORMATION FOR PAYMENTS BY ACH</u></p> <p>Bank Name:</p> <p>Bank Routing Number:</p> <p>Bank Account Number:</p> <p>Federal ID:</p>		

**WESTCHESTER SMART POWER ELECTRIC SERVICE AGREEMENT
(LAST REVISED 1/13/2016)**

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RECITALS

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

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

WHEREAS, the Westchester pilot program is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

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

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

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

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

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

WHEREAS, Competitive Supplier has submitted offers to provide two distinct electric supply products and two corresponding pricing levels, (1) a Default Product and price, and (2) a 100% Renewable Clean Power Product and price;

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

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

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

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

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

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

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

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

1.2 Clean Power Product – 100% Renewable power supply product offered to Participating Customers on an opt-in basis.

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

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

1.5 Competitive Supplier – An entity duly authorized to conduct business in the State of New York as an ESCO.

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

1.7 Default Product – Traditional generation mix, meeting the minimum Renewable Portfolio Standards for electric power established by New York State.

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

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

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

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

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

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

1.14 **ESA - This Electric Service Agreement.**

1.15 **Environmental Disclosure Label** – Competitive Suppliers selling electricity are required to provide customers with periodic Environmental Disclosure Labels in plain language. It provides information on the types of fuels used to generate electricity, air emissions resulting from generating electricity, and a comparison of those emissions to a statewide average.

1.16 **February Order** – February 26, 2015 “Order Granting Petition in Part” issued by PSC in Case 14-M-0564, “Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester.”

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

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

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

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

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

1.22 **kWh, kW** - Kilowatt-hour and kilowatt, respectively.

1.23 **Local Law** - A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice pilot program.

1.24 **Memorandum of Understanding** - Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.

1.25 **New Consumers** - Residential and small consumers of electricity that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality.

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

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

1.28 **Participating Consumers** - Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or are New Consumers.

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

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

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

1.32 **Program** - Sustainable Westchester Community Choice Aggregation Program.

1.33 Program Manager – Sustainable Westchester, Inc., a not-for-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

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

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

1.36 Retail Price - As set forth in Exhibit A.

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

1.38 Term - As defined in Article 4.1.

1.39 Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights. Issued by the New York State Public Service Commission (Case 98-M-1343), December 2015.

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Full-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Full-Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise. Competitive Supplier further recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the

Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Full-Requirements Service to those Participating Consumers located within the Municipality as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

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

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the February Order and Local Law for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

Municipality specifically represents that it has exercised due diligence to review and have fully complied with all relevant regulations of the Attorney General of the State of New York and the New York Department of State in order to fulfill the requirements to enter into a Local Law.

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

2.4 CONDITIONS PRECEDENT

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

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

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

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to inform any such vendor of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

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

3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the February Order, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Default Service by the Distribution Utility; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

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

3.3 CONSUMER AWARENESS

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

3.4 ENROLLMENT

3.4.1 Participating Consumers –All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 20-day period specified in the Local Law. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

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

3.4.3 Eligible Consumers Opting Out - At any time during this ESA, Eligible Consumers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Full-Requirements Power Supply to such Eligible Consumers at a price determined by the then-prevailing market conditions, as defined in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

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

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

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read date after _____, unless terminated earlier under Article 4.2 below ("Term").

4.2 TERMINATION

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

- a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Full-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- d) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

4.3 OBLIGATIONS UPON TERMINATION

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

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

4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

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

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available to it.

5.2 CUSTOMER SERVICE ACCESS

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

5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's standard credit policies, to the extent permitted by law, as described in Exhibit A.

In any event, should either Program Manager or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumer at the NYISO strip clearing price for the appropriate zone (H or I), in which the capacity tag reduction is certified by appropriate party.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the Municipality, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Manager to include no less than three (3) inserts per year into such

communications, provided that the Municipality pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by PSC, or any other Governmental Authority to be so communicated.

5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month, for customers who have agreed to have their personal information provided to Program Manager or to Municipality.

5.9 COMPLIANCE WITH LAWS

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

5.10 CONSENT

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

ARTICLE 6 ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under February Order and Local Law and includes negotiating the terms and conditions under which Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of

the Competitive Supplier to arrange for delivery of Full-Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA, unless a court, PSC, or other lawful authority shall adjudicate to the contrary; provided, however, that the Municipality may be considered to be operating a municipal load aggregation plan pursuant to February Order and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Full-Requirements Power Supply.

Municipality shall conduct outreach to the community in addition to the program notification letter, which will be delivered at the Competitive Supplier's expense. Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES.

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;
- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the February Order, including but not limited to the following:
 5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.
 6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued."
- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is deemed credit worthy for the duration of the ESA by an independent review of a qualified organization, such as an accounting firm, and the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA by an independent review of a qualified organization, such as an energy consulting firm;

- e. Provide the Municipality with the communications content to effect customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program's implementation; and
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.

7.2 PROGRAM MANAGER FEE

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

7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House ("ACH") (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the prior calendar month. For example, full payments received in January will be paid by the end of February. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail. Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

7.4 INDEPENDENT CONTRACTOR

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

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

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

8.2 OBLIGATION TO SERVE

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

8.3 METERING

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

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

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

8.4.2 Billing and Payment

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

Comment [GW1]: L whitehead wants this amended

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC

transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE FEBRUARY ORDER

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

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the February Order and to all related Orders of Case 15020/14-M-0564 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

The Competitive Supplier shall, on or before _____, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any

PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

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

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

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

12.1.2 Consumer-Related Data

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

Municipality's satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

12.1.3 Standard of Care

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

12.2 POWER SUPPLY REPORT

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

12.3 BOOKS AND RECORDS

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

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. The Municipality shall treat any reports and/or filings received from Competitive Supplier as confidential information subject to the terms of Article 15. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

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

13.2 DISPUTE RESOLUTION

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

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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

14.2 NOTICE OF INDEMNIFICATION CLAIMS

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

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

14.4 DUTY TO MITIGATE

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

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

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

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

15.2 BY THE MUNICIPALITY

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

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

15.3 BY THE PROGRAM MANAGER

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

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

ARTICLE 16 INSURANCE

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

Comment [GW2]: W singleton suggests adding Verizon language

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

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

ARTICLE 17 REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s), or at the sole discretion of Municipality or Program Manager, this ESA may be terminated under Article 4.2.

17.2 NEW TAXES

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

ARTICLE 18 MISCELLANEOUS

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Competitive Supplier shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. Notwithstanding the above, any assignment, of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least 120 days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any

assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.2 DIRECT MARKETING

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

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

18.3 NOTICES

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

If to Competitive Supplier:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
c/o Village Manager of Ossining
16 Croton Avenue
Ossining NY 10562

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

18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

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

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

18.6 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the

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

18.7 EXPENSES

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

18.8 NO JOINT VENTURE

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

18.9 JOINT WORK PRODUCT

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

18.10 COUNTERPARTS

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

18.11 WAIVER

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may

continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective if made in writing and signed by the Party who is making such waiver.

18.12 ADVERTISING LIMITATIONS

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

18.13 PRESS RELEASES

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

18.14 HEADINGS AND CAPTIONS

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

18.15 SURVIVAL OF OBLIGATION

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

19 REMEDIES

19.1 GENERAL

Subject to the limitations set forth in Article 18.19.2 below and Article 4, the Municipality and the Competitive Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

19.2 LIMITATIONS

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER

BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.
Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages or, under Article 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages or other such losses claimed by third- parties subject to an aggregate limit of \$[] on Competitive Supplier's indemnification obligation pursuant to this provision.

//Signatures Follow//

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

COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

**EXHIBIT A-Part 1
PRICES AND TERMS**

**SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM
DEFAULT PRODUCT**

Full-Requirements Price by Rate Classification for all Participating Consumers commencing service on the first Consumer meter-read date after _____.

Rate Class	Price per kWh
Residential	
Small Commercial	

[Final Prices will be determined prior to the beginning of the respective pricing periods]

Terms for System Supply Service

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

Start-Up Service Date: Full-Requirements retail power supply will commence at the prices stated above as of Participating Consumer's first meter read dates after _____.

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

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

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

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

New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above shall be served at a price of \$ ____ plus the applicable adder for each rate class outlined below.

Rate Class	Adder per kWh
Residential	
Small Commercial	

**EXHIBIT A-Part 2
PRICES AND TERMS**

**SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM
100% RENEWABLE CLEAN POWER PRODUCT**

Full-Requirements Price for 100% Renewable Power Supply by Rate Classification for all Participating Consumers commencing service on the first Consumer meter-read date after _____.

Rate Class	Price per kWh
Residential	
Small Commercial	

[Final Prices will be determined prior to the beginning of the respective pricing periods]

Terms for System Supply Service

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

Start-Up Service Date: 100% Renewable Full-Requirements retail power supply will commence at the prices stated above as of Participating Consumer's first meter read dates after _____.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Full-Requirements Power Supply mix in an amount equal to 100% of all power supplied under this exhibit.

Term: The period of delivery of 100% Renewable Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

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

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

New Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above shall be served at a price of \$ ____ plus the applicable adder for each rate class outlined below.

Rate Class	Adder per kWh
Residential	
Small Commercial	

EXHIBIT B
TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA SUMMARY

Rate Code	
Rate Name	
Municipality	
# of Default Accounts of Eligible Consumers	
	kWh
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

**EXHIBIT C
PAYMENT SCHEDULE**

<p><u>PROGRAM MANAGER GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>	<p><u>MUNICIPALITY GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>	<p><u>SUPPLIER GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>
<p><u>CONSULTANT LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>	<p><u>MUNICIPALITY LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>	<p><u>SUPPLIER LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>
<p><u>CONSULTANT BANK INFORMATION FOR PAYMENTS BY ACH</u></p> <p>Bank Name:</p> <p>Bank Routing Number:</p> <p>Bank Account Number:</p> <p>Federal ID:</p>		

8

WORK SESSION

ITEM #3



Town of Mamaroneck

Town Center

740 West Boston Post Road, Mamaroneck, NY 10543-3353

OFFICE OF THE TOWN ADMINISTRATOR

TEL: 914/381-7810

FAX: 914/381-7809

townadministrator@townofmamaroneck.org

Memorandum

To: Supervisor and Town Board

Re: Adoption of Revised Procurement Policy

Date: January 9, 2016

Chapter 3 of the Town of Mamaroneck Administrative Manual is the policy and procedure for procurement of goods and services by Town Departments and the Fire District. Attached is a complete revision of the procurement policy that reflects amendments to New York State Statutes governing government procurement. The policy also addresses our own limitations and procedures for purchasing by operating departments.

The highlights of the new policy include:

- Establishes tiers of purchases that require a competitive bid or request for proposal requirement versus purchases that will only require written proposals for alternate price quotes.
- Establishes exemptions to the competitive bid requirement when purchases are made from other government contracts (piggybacking) or from New York State approved purchasing consortiums
- Establishes criteria for emergency purchasing contracts that is also exempt from competitive bidding
- Explains all documentation required for various types of purchases
- In an effort to take advantage of on-line purchasing pricing, a procedure is also established for credit card purchases and use of Town credit cards.

This policy has been amended to reflect not only changes in New York State law but also to continue the highest level of accountability and transparency for Town purchases.

ACTION REQUESTED: THAT THE TOWN BOARD ADOPT THE AMENDED CHAPTER 3 OF THE TOWN'S PURCHASING AND PROCUREMENT POLICY FOR ALL TOWN DEPARTMENTS AND THE TOWN OF MAMARONECK FIRE DISTRICT EFFECTIVE 1/20/16

Stephen V. Altieri
Town Administrator



Chapter 3 Procurement and Purchasing Policy

(Revised and adopted 1/20/16)

3.1 Applicability

The Town of Mamaroneck does hereby adopt the following policy and procedure governing the purchase and procurement of all goods and services

3.2 Review of Purchases; Purchases not subject to public bid

Every purchase to be made must initially be reviewed to determine whether it is a purchase contract or a public works contract. Once that determination is made, a reasonable effort will be made to determine whether it is known at the time of the purchase that the total aggregate amount to be spent on the item of supply or service is not subject to competitive bidding. The following items are not subject to competitive bidding pursuant to Section 103 of the New York State General Municipal Law.

- 1) Purchase contracts under \$20,000, or as may be further amended pursuant to GML Section 103.
- 2) Public Works contracts under \$35,000 or as may be further amended pursuant to GML Section 103
- 3) Emergency Purchases approved by the Town Administrator (See Section 3.6(4))
- 4) Goods purchased from agencies for the blind and severely handicapped
- 5) Goods purchased from correctional institutions
- 6) Purchases under New York State and Westchester County Contracts
- 7) Purchases under contracts from other political subdivisions within the United States if such contract was publicly bid and made available for use by other governmental entities.
- 8) Surplus and secondhand purchases from another governmental entity.

3.3 Methods for Securing Goods and Services

All goods and services will be secured by the use of written requests for proposals, written quotations, verbal quotations, or any method that assures goods will be purchased at the lowest price and best value. Exceptions to this requirement are as follows:

- a) Emergency Purchases approved by the Town Administrator
- b) Goods purchased from agencies for the blind or severely handicapped
- c) Goods purchased from correctional institutions
- d) Purchases under New York State Contracts, Westchester County Contracts or Federal General Services Administration Contracts

- e) Purchases under contracts from other political subdivisions within the United States if such contract was publicly bid and made available for use by other governmental entities.
- f) Goods purchased from purchasing consortiums that utilize some form of competitive bidding to establish pricing.

3.4 Methods of Purchase

A. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

Estimated Amount of Purchase Contract	Method
\$1 - \$2,000	Without prior authorization from the Town Administrator's Office, a Department Head may make such purchases for materials, services, supplies or repairs. Verbal quotes are preferred and are to be documented on the claim form
\$2,001-\$19,999	Prior authorization of the Town Administrator. At least 3 written/faxed /e-mailed or otherwise documented quotes are required. Requisition and Purchase order to be signed by the Town Comptroller and Town Administrator
\$20,000 and above	Subject to publicly advertised bid or RFP. Must be circulated to at least 3 companies. Contract must be approved by the Town Board. A purchase order must be signed by Town Administrator after Town Board approval is granted, prior to order being made.
Estimated Amount of Public Works Contract	
\$1- \$2,999	At least 2 verbal or written quotations documented on the claim form
\$3,000 to \$9,999	At least 3 written/faxed/e-mailed quotations. Purchase order must be

signed by the Town Administrator prior to order being made

\$10,000-\$34,999

Subject to publicly advertised RFP. Must be circulated to at least three companies. Purchase order must be signed by the Town Administrator prior to order being made. Contracts in this category may require Town Board approval.

\$35,000 and above

Subject to a publicly advertised bid pursuant to GML Section 103. Must be circulated to at least 3 companies. Contract **MUST** be approved by the Town Board and a formal contract must be signed by the Town Administrator after Town Board approval is granted

B. Department heads must make a good faith effort to obtain the required number of proposals or quotations. If the department head is unable to obtain the required number of proposals or quotations, the department must document the reasons alternate proposals or quotations were not available. As an example, if a vendor is a sole source provider of the materials, supplies, services or equipment that is to be indicated on the interim voucher or requisition.

3.5 Documentation Required

A. For purchase contracts less than \$2,000 and public work contracts less than \$3,000 a standard Town Interim Voucher is to be completed and submitted to the Comptroller's office with the following information:

- 1) Name and Address of Vendor
- 2) Date
- 3) Budget Code
- 4) Quantity, Description and purpose of goods or services purchased.
Alternate quotations where available
- 5) Signature of the department head
- 6) Original Invoices and signed packing slip where applicable

B. For purchase contracts above \$2,000 and public work contracts above \$3,000 a Standard Town Requisition Form is to be completed and submitted to the Town Administrator with the following information

- 1) Name and address of recommended vendor
- 2) Date of Requisition

- 3) Budget Code
- 4) Quantity, description and purpose of the goods or services to be purchased
- 5) Unit cost and total cost of proposed purchase where applicable
- 6) Alternate price quotations received for the purchase must be attached to the requisition
- 7) For purchases from government contracts, a copy of the government contract cover page and those pages that apply to the purchase must be attached to the requisition.

- C. Approved requisitions must be forwarded to the Comptroller's Office for processing. A purchase order will be prepared and the purchase order form becomes the official contract for procurement except in those instances where a separate contract is required. No orders shall be placed prior to a Purchase Order being prepared by the Comptroller's Office.
- D. The Comptroller's Office shall send a copy of the original signed purchase order to the ordering department. Upon receipt of the approved purchase order the Department Head is authorized to place an order.
- E. Upon satisfactory receipt of the materials, supplies, equipment, services and or repairs, the Department Head shall submit the original signed copy of the purchase order, the original invoice and original packing slip signed by the employee who received the goods or services to the Comptroller's Office for processing of payment to the vendor.
- F. In the case of construction projects or installment payment projects, the Department Head must submit and approved payment application form executed by the project manager and/or project architect.

3.6 Exemptions

There may be circumstances when, certain types of procurements for which, the solicitation of alternative proposals or quotations will not be in the best interest of the Town. In the following circumstances it may not be in the best interest of the Town of Mamaroneck to solicit alternate quotations or not accept the lowest bid:

- 1) Professional services or services requiring special or technical skill, training or expertise. The individual or company must be chosen based upon qualifications showing accountability, reliability, skill, education and training, integrity and moral worth.
- 2) In determining whether a service fits into this category, the Town shall take into consideration the following guidelines:
 - a) Whether the services are subject to state licensing or testing requirements.

- b) Whether substantial formal education or training is a necessary prerequisite to the performance of services
 - c) Whether the services require a personal relationship between the individual and municipal officials.
- 3) Professional or technical services shall include but not be limited to the following: services of an attorney; services of a physician; technical services of an engineer engaged to prepare plans, maps, or estimates; services of an insurance broker/carrier, services of a public accountant, investment management services, printing services that involve extensive writing, editing or art work; management of municipally owned property; computer software or programming services for customized programs, or services involving substantial modification and customizing of prepackaged software.
- 4) Emergency Purchases pursuant to Section 103(4) of the GML. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the community and its residents. This section does not preclude alternate proposals if time permits. The emergency situation must be documented. All emergency purchases are subject to the prior approval of the Town Administrator

3.7 Credit Card Purchases

- A. Subject to the approval of the Town Administrator or Comptroller, credit card purchases will be acceptable in accordance with the Town's procurement policy.
- B. The Town maintains a master credit card that may be utilized by Department heads or other authorized Town employees for the purpose of facilitating departmental purchases.
- C. No purchases of personal items shall be made on Town credit cards, even if the intent is to reimburse the Town of such purchases.
- D. No department, Department Head or Town employee shall request a "store" or any other type of credit card under the name of the Town of Mamaroneck. No additional bank credit lines or accounts will be established without the authorization of the Town Administrator
- E. This section does not pertain to vendor accounts established for the purpose of "buying on account" with an invoice subsequently sent to the Town for payment. These accounts should be established on an as needed basis through the Comptroller's Office.

WORK SESSION
ITEM #4



Town of Mamaroneck

Town Center

740 West Boston Post Road, Mamaroneck, NY 10543-3353

OFFICE OF THE TOWN ADMINISTRATOR

TEL: 914/381-7810

FAX: 914/381-7809

townadministrator@townofmamaroneck.org

Memorandum

To: Supervisor and Town Board

Re: 2016 Goals and Priorities

Date: January 14, 2016

Attached is second draft of the goals and priorities for 2016. This latest draft reflects comments by two of the Town Board members. I would like to discuss this further at our January 20 work session in order to begin implementation of the plan.

Stephen V. Altieri
Town Administrator

**TOWN OF MAMARONECK
2016 GOALS/PRIORITIES**

	<u>LEGISLATIVE GOALS</u>	<u>Projected Schedule for Completion</u>
1.	<u>PACE Technical Grant-Greening of Town Code</u> Carryover from 2015. Town has received draft report that will first go through staff review and then be forwarded to the Town Board for further consideration	Completion and final review. June of 2016
2.	<u>Residential Site Plan Law</u> Moratorium adopted effective Jan. 1, 2016. Local law to be drafted with review by staff, Town Board, Planning and Zoning Board Chairs.	Completion and adoption by March 31, 2016
3.	<u>Mechanical Rock Removal Law</u> Carryover from 2015. Proposed removal of rock quantity threshold and limit all mechanical rock removal to 15 days maximum in a 12 month period	Completion by April 20, 2016
4.	<u>Review of Private Sewer Lateral Legislation</u> Carryover from 2015. Proposed legislation to mandate periodic inspection of private sewer laterals. Legislate a program for repair or replacement of sewer laterals	Completion to be conjunction with SSES Study in 2016/17
5.	<u>Amend Flood Damage Prevention Law-</u> The law would be amended to comply with new FEMA maps issued in 2015	Carryover from 2015. Completion by fall of 2016
6	<u>Update of LWRP-</u> This project entails an update to the policies of the LWRP to be coordinated with revised policies in the New York State LWRP	Carryover from 2015- Expected completion late spring 2016
7.	<u>Codification of Traffic Regulations-</u> Preparing all of the Town's traffic codes into one section of the Town Code for ease of reference and amendment when necessary	Carryover from 2015- Expected completion summer of 2016
8.	<u>Noise Ordinance Amendment-</u> Consider an amendment to the noise ordinance as it relates to a requirement for landscapers to utilize lower decibel output equipment	Completion by the summer of 2016

9.	<u>Amendment to Peddlers Law</u> - Consider an amendment that would provide a fee waiver for veterans.	Completion by spring of 2016
	<u>OPERATIONAL PROJECTS AND GOALS</u>	Projected Schedule for Completion
1.	Completion of all approved 2016 capital projects as listed in the 2016 Town Budget- See Capital project report included in the 2016 Town Budget for further details	All projects planned for completion by December 2016
2.	Update of Town Assessment Roll-Preparation for 2017 Full Revaluation	Spring of 2016 through December of 2016
3	Website Redesign- Move to Civic Plus as the Town's website provider and designer	Expected launch of new site Summer 2016
4.	Communications Project- With the assistance of a consultant, evaluate alternatives to improve communications and outreach with the community to inform them of Town government activities and initiatives. Project to be conducted in conjunction with website redesign. Also would include consideration of an alternative emergency notification system	Ongoing throughout 2016.
5.	Implementation installation of the new Lightpath Telephone System for all Town Departments	March through May 2016
6.	Implement on line payment and registration for Recreation Programs and Facilities	Spring of 2016
7.	Implement on line payment of property taxes	September of 2016 for first School tax payment
8.	Expand on line payments in the Town Court to include traffic infractions	Fall of 2016
9.	Technology Projects: Adoption of Cybersecurity policy	March of 2016
	Upgrades and improvements to Town Computer network system to improve security of the system	Winter/Spring 2016
10.	Continued review and consideration of Community Choice Aggregation Program	January 2016

11.	Continued review and consideration of Municipal Solar Buyer's Group Program- Evaluate the feasibility and value of introducing solar power to select Town Facilities	January – August 2016
12.	Negotiation of Renewal Collective Bargaining Agreement – Career Firefighters	Negotiations to commence March 2016
13.	Completion of Sanitary Sewer Evaluation System for the entire unincorporated area in accordance with the Town's agreement with Westchester County	Spring of 2016 through June of 2017
14.	Implementation of Sanitary Sewer Capacity Management Operations and Maintenance Program- This is a requirement of our agreement with Westchester County for sewer upgrades	Program to go into effect when approved by West. County Approval expected in spring of 2016
15.	Senior Center- expand outreach to seniors in the community to increase participation in the congregate meal program and senior center activities through communications to churches, and other organizations	Ongoing throughout 2016
16.	Development of Future Plans for Third Floor of Town Center- Commencement of this project awaits final decision by LMCTV as to their permanent headquarters	Carryover from 2015. No final schedule available
17.	Develop a Town Policy for the use of Pesticides and Fertilizers	Spring of 2016
18.	Sustainability Collaborative Projects: <ul style="list-style-type: none"> ▪ Rain barrel purchasing program ▪ Energy Data Monitoring (see goal #15) ▪ Leaf Mulching ▪ Green Gardening Program ▪ Complete Streets Program- Walkable, bikable streets ▪ Townwide Bicycle Event 	Completion of all programs by December 2016
19.	Grants-In-Aid: On an ongoing basis evaluate available grant opportunities and their potential application to the Town's goals and projects	No specific schedule for completion
20.	Baldwin Avenue Parking – Purchase parking meters and establish both short term and long term parking on Baldwin Avenue for park users and short term commuter parking. Also establish special parking permit for residents of Baldwin Avenue that do not have on-site parking. Seek amendment to residential parking law to include Baldwin Avenue residents.	Completion by summer of 2016

**WORK SESSION
ITEM #5**

No Attachment

WORK SESSION

ITEM #6

No Attachment

WORK SESSION

ITEM #7



Town of Mamaroneck

Town Center

740 West Boston Post Road, Mamaroneck, NY 10543-3353

OFFICE OF THE TOWN ADMINISTRATOR

TEL: 914/381-7810

FAX: 914/381-7809

townadministrator@townofmamaroneck.org

Memorandum

To: Supervisor and Town Board

Re: Update Weaver Street Sidewalk Extension

Date: January 15, 2016

The Town continues to proceed with preparations for this project. Because the project is federally funded there are a number of administrative compliance issues that must be addressed.

At the last Town Board meeting approval was given for the State and Federal Environmental review documents which have now been submitted to New York State DOT. The State is also requiring the Town to conduct an archaeological survey which we reasonably certain is limited to determining whether there are any national or New York State Landmarks along the construction route.

The more involved procedure has to do with the acquisition of land for the project. We have assumed a 10ft wide corridor the construction of the sidewalk and the adjacent buffer strip between the sidewalk and street. To establish this corridor the Town would need to acquire roughly 1.5 to 2ft of private land from eight properties to achieve this corridor. Although the amount of land is small and even though the Town has already been in contact with the property owners, the State is requiring the Town to comply with the Federal right of way acquisition procedure. This involves multiple appraisals and a certain level of experience in right of way acquisition. Therefore we are evaluating the option of reducing the width of the corridor to avoid any land acquisition. Following the Federal procedure could take six to seven months.

Lastly, we will have to conduct a small drainage study to evaluate drainage of that portion of Weaver Street near the new sidewalk. We have begun work on the study and also preliminary design of the sidewalk.

Although it is still possible to complete the project in 2016, we are concerned that the administrative requirements and the State approvals needed to move forward could extend the project to the spring of 2017. The Town, as a contingency, has requested an extension of time so as not to put the grant funds at risk.

Stephen V. Altieri
Town Administrator

WORK SESSION
ITEM #8



Town of Mamaroneck

Town Center

740 West Boston Post Road, Mamaroneck, NY 10543-3353

OFFICE OF THE TOWN ADMINISTRATOR

TEL: 914/381-7810

FAX: 914/381-7809

townadministrator@townofmamaroneck.org

www.townofmamaroneck.org

November 6, 2015

Ms. Betty-Ann Sherer
Land Use Coordinator
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Delivered by e-mail & Postal Service

Re: Comments on Proposed Scoping Document
Hampshire Country Club Planned Residential Development

Dear Ms. Sherer:

The following comments are submitted by the Town of Mamaroneck in connection with the Draft Scoping Document dated August 25, 2015 for the Hampshire Country Club Residential Development application. The Town is requesting that these additional comments be taken into consideration and made a part of the final scoping document.

III. Existing Environmental Conditions, Anticipated Impacts and Mitigation

C. Wetlands and Water bodies:

1d. The draft scoping document states that a functional analysis of the existing wetland communities should be completed.

The Town suggests that the components of the functional analysis be clarified to include a review of the ecological benefits and how the current wetlands serve as wildlife habitats and how the wetlands impact water quality and biological diversity on the Hampshire Property.

E. Storm Water Management

1a. At the southern end of the Hampshire Property on Hommocks Road, there is a flood gate that is controlled by the current owners of the property. When opened storm water drains the golf course through a vault and piping system that courses underneath the Hommocks Fields owned by the Town of Mamaroneck. The flood gate system is also used at times by the property owner to prevent incoming tidal flow onto the golf course. Storm water carried through this system eventually drains out to Little Harbor and Long Island Sound. The scoping document should acknowledge the existence of these drainage facilities in the pre-development description of existing conditions.

2a Anticipated Impacts – Included in this section of the scoping document should be a complete analysis of the impact of the alternative development schemes upon the drainage facilities described in the existing conditions. The analysis should consider the size of the existing storm drain pipes and their capacity both during normal conditions and during 50 and 100 year storm events. Included should also be the impacts upon Little Harbor for all alternative development schemes. The scoping document should also indicate whether the existing flood gates would remain a component of the storm drainage system in any of the development schemes. If not, what alternative storm drainage facilities would be in place to carry storm water from the property and what are the potential downstream impacts upon the Hommocks Field and Little Harbor

3. Mitigation- What steps would be taken to prevent surcharging of the existing storm drain system and flooding on Hommocks Road and on the Hommocks Fields during 50 and 100 year storm events.

J. Traffic

1. Existing Conditions - The current development proposal calls for traffic to enter and exit by way to the intersection of Eagle Knolls Road and Hommocks Road. Hommocks Road eventually leads to the intersection of Boston Post Road (NY Rte 1), Hommocks Road and Weaver Street (NY Rte 125). In describing the existing conditions the scoping document does not make mention of facilities immediately adjacent to Hommocks Road which includes the Hommocks School, Hommocks Ice Rink and Hommocks Pool. The school is a source of high traffic volumes particularly during school drop off and pickup. Traffic conditions are intensified during those times when the school, ice rink and pool are operating concurrently. The analysis of existing conditions should include current traffic volumes generated by these facilities.

2. Anticipated Impacts – For each development alternative, traffic volumes and capacity analysis should include traffic volumes generated by the school, ice rink and pool. The traffic volumes should include seasonal analysis for the busiest times for each facility and for those times when the three facilities operate concurrently. The analysis should suggest changes that would be necessary to the existing roadways and traffic control devices to provide for efficient traffic flows on Hommocks Road and through Hommocks Road/Weaver Street/Boston Post Road intersection.

K. Community Facilities

1. Existing Conditions - Although the development plan is located in the Village of Mamaroneck. The Hampshire property is also located in the Town of Mamaroneck. Residents of the Village of Mamaroneck are eligible to use, as residents of the Town, all Town recreation facilities including the Hommocks Pool and Hommocks Ice Rink. Therefore the Hommocks Pool and Hommocks Ice Rink should be included in the discussion of existing open space and recreation facilities.

2. Anticipated Impacts – In this discussion, an analysis is to be included on the impacts upon the Hommocks Pool and Hommocks Ice Rink. Specifically, what might be the expected increase in registrations and participation in the use of these facilities.

Thank you for the opportunity to comment upon the draft scoping document and we look forward to our comments be including in the final version of the document. Should there be a need to clarify any of the comments, please do not hesitate to contact my office.

Sincerely



**Stephen V. Altieri
Town Administrator**

**cc: Supervisor Nancy Seligson
Members of the Town Board
Richard Slingerland-Village of Mamaroneck Manager**

RESOLUTION

VILLAGE OF MAMARONECK PLANNING BOARD

Adopted September 30, 2015

RE: Hampshire Country Club, 1025 Cove Road

Resolution Adopting Positive Declaration and Setting a Public Scoping Session

After due discussion and deliberation, on motion by Mr. Verni, seconded by Mr. Sjunneemark and carried, the following resolution was adopted unanimously in a 5-0 vote:

WHEREAS, Hampshire Recreation, LLC (“Hampshire”) is the owner of a 106.2 acre parcel of property located at 1025 Cove Road, 98.9 acres of which are situated within the Village of Mamaroneck (Section 9, Block 35, Lot 700, Section 9, Block 36, Lot 1, Section 9, Block 42, Lots 568, 695 and 367, Section 9, Block 43, Lots 1 and 12) and 7.3 acres are situated within the Town of Mamaroneck); and

WHEREAS, of those 98.9 acres within the Village, 94.5 acres are situated within an R-20 residential zoning district and 4.4 acres are situated within the Marine Recreation (“MR”) zoning district); and

WHEREAS, on June 26, 2015 Hampshire submitted an application to the Village of Mamaroneck Planning Board (“Planning Board”) for subdivision, site plan, special permit and other approvals in connection with a proposed 105 unit Planned Residential Development (“PRD”) on the 94.5 acre portion of their property within the Village that is zoned R-20 (“Proposed Action”); and

WHEREAS, as part of its application, Hampshire submitted a Full Environmental Assessment Form (“EAF”) to assess the potential environmental impacts of the Proposed Action under the New York State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, the Planning Board has determined that the Proposed Action is subject to SEQRA and that it will involve other agencies; and

WHEREAS, the Planning Board has preliminarily classified the Proposed Action as a Type I Action under SEQRA; and

WHEREAS, by resolution adopted on July 8, 2015, the Planning Board authorized the circulation of a Notice of Intent to be Lead Agency ("Notice of Intent") and, pursuant to that resolution, by letter dated July 15, 2015, the Planning Board's Notice of Intent to serve as Lead Agency under SEQRA for the environmental review of the Proposed Action was circulated to all Involved Agencies; and

WHEREAS, no objection within the 30 day time period set forth in that Notice of Intent has been raised by any other Involved Agencies to the Planning Board serving as Lead Agency for the environmental review of the Proposed Action; and

WHEREAS, on September 9, 2015, the Planning Board declared itself to be the Lead Agency for the environmental review of the Proposed Action; and

WHEREAS, the Planning Board has reviewed Part 1 of the EAF prepared by Hampshire as sponsor of the Proposed Action, and has reviewed Parts 2 and 3 of the EAF prepared on behalf of the Planning Board by The Chazen Companies, as the Village's planning and environmental consultant ("The Chazen Companies"); and

WHEREAS, the Planning Board has confirmed that the Proposed Action is a Type I Action and determined that the Proposed Action may include the potential for one or more significant adverse impacts on the environment if it is approved and built; and

WHEREAS, the Village of Mamaroneck Planning Board has reviewed the attached determination of significance ("Positive Declaration") prepared on the Proposed Action on behalf of the Planning Board by The Chazen Companies; and

WHEREAS, Hampshire, in anticipation of the Planning Board's adoption of a Positive Declaration, prematurely submitted a Draft Scope for the preparation of an environmental impact statement for the Proposed Action ("Draft Scope");

NOW THEREFORE, be it

RESOLVED, that the Planning Board adopts the contents of the EAF, Parts 2 and 3; and be it

FURTHER RESOLVED that the Planning Board adopts the contents and conclusions set forth in the attached Positive Declaration regarding the potential environmental impacts if the Proposed Action is approved and built; and be it

FURTHER RESOLVED, that the Planning Board Chairman is authorized to complete and sign the Determination of Significance on the EAF declaring as set forth therein that the Proposed Action "may result in one or more significant adverse impacts on the environment and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts"; and be it

FURTHER RESOLVED, that the Chairman of the Planning Board with the assistance of counsel, Village staff and consultants, is authorized to file and circulate the Positive Declaration in accordance with NYS Department of Environmental Conservation Rule 617.12(6 NYCRR §617.12); and be it

FURTHER RESOLVED, that the Planning Board, as of the date of this resolution, accepts the Draft Scope submitted by Hampshire, which Draft Scope is attached hereto; and be it

FURTHER RESOLVED, that the Planning Board will conduct a public scoping session for the Proposed Action on October 28, 2015 at 7:00 PM at the Courtroom at 169 Mount Pleasant Avenue, Mamaroneck, New York at which time all those wishing to make comments on the Draft Scope will be afforded an opportunity to be heard; and be it

FURTHER RESOLVED, that the Planning Board will accept written comments on the Draft Scope until the close of business on November 6, 2015 and such written comments should be sent by mail to Betty-Ann Sherer, Land Use Coordinator, at 169 Mount Pleasant Avenue, Mamaroneck, New York, 10543 or by email to bsherer@vomny.org; and be it

FURTHER RESOLVED, that the Chairman of the Planning Board with the assistance of counsel, Village staff and consultants is authorized to take such other and further action as may be necessary to meet the Planning Board's obligations as Lead Agency or as otherwise might be appropriate in its role as Lead Agency.

**VILLAGE OF MAMARONECK PLANNING BOARD
STATE ENVIRONMENTAL QUALITY REVIEW
POSITIVE DECLARATION
AND NOTICE OF PUBLIC SCOPING SESSION TO BE HELD ON
OCTOBER 28, 2015**

Notice of Intent to Prepare a Draft DEIS
Determination of Significance

Date: September 30, 2015

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Village of Mamaroneck Planning Board, as Lead Agency, has determined that the Proposed Action, described below, may have a significant adverse effect on the environment and a Draft Environmental Impact Statement ("DEIS") will be prepared.

Name of Action/Project: Hampshire Country Club Planned Residential Development

Name of Applicant: Hampshire Recreation, LLC and Toll Brothers, Inc.

SEQR Status: Type 1

Scoping: Yes

A public Scoping Session will be held at the Mamaroneck Village Hall, 169 Mt. Pleasant Street, Mamaroneck, New York 10543 on October 28, 2015, at 7:00 pm.

The Applicant has submitted a draft scoping document to the Village Planning Board.

The draft scoping document will be distributed to all interested and involved agencies, and will be available for public review in advance of the Scoping Session on the Village's website www.village.mamaroneck.ny.us, at the Mamaroneck Public Library at 136 Prospect Avenue, Mamaroneck, New York 10543 and in hard copy, available from:

Betty-Ann Sherer, Land Use Coordinator
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543
914-777-7731
bsherer@vomny.org

Copies will also be available at the scoping session. Public comment will be accepted at the scoping session on all issues related to the scope of the DEIS.

Written comments on the proposed scope will also be accepted until November 6, 2015 by sending them via mail or e-mail to:

Betty-Ann Sherer, Land Use Coordinator
Village of Mamaroneck
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543
bsherer@vomny.org

Notice to interested and involved agencies: You are requested to provide written comments reflecting your concerns, jurisdictions and information needs sufficient to ensure that the DEIS will be adequate to support your agency's SEQR Findings.

Description of Action:

The proposed action is a planned residential development on the 94.5 acre portion of the Hampshire Country Club located in the Village of Mamaroneck's R-20 zoning district. The proposed development would result in a total of 105 units on the subject property, consisting of 44 single-family residences and 61 townhouses. The existing membership club located on the marine residential (MR) zoned portion of the site (clubhouse, pool and parking) would remain, but the existing golf course would be replaced by the proposed homes. A copy of the proposed site plan is attached.

Location of Action:

Town/Municipality: Village of Mamaroneck

County: Westchester County

Street Address: 1025 Cove Road
Mamaroneck, New York 10543

Tax Map Parcels: Section 9, Block 35, Lot 700
Section 9, Block 36, Lot 1
Section 9, Block 42, Lots 568, 659 and 367
Section 9, Block 43, Lots 1 and 12

Reasons supporting this Positive Declaration include, but are not limited to, the following potential impacts:

Potential impacts to Critical Environmental Areas on and adjoining the site

Potential flooding impacts

Potential impacts to wetlands and surface water resources

Potential impacts to groundwater resources

Potential visual impacts, including impacts from light pollution

Potential impacts from grading, cut and fill

Potential impacts to archeological resources

Potential traffic impacts, including vehicular, bicycle and pedestrian safety

Potential construction impacts including impacts to areas roadways from construction vehicle traffic

Potential impacts to public health, welfare and safety

Compatibility with Village planning documents

Potential impacts, including fiscal impacts, from increased demands on community services such as fire, rescue and police, schools, and related infrastructure

Potential impacts from pesticide contamination associated with prior use of the property as a golf course

Loss of open space

Energy Use

THIS POSITIVE DECLARATION WAS AUTHORIZED AT A MEETING OF THE LEAD AGENCY HELD ON SEPTEMBER 30, 2015.

For Further Information:

Contact Person:
Betty-Ann Sherer, Land Use Coordinator
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543
914-777-7731
bsherer@vomny.org

A copy of this Notice is being sent to:

INVOLVED AGENCIES

Village of Mamaroneck Harbor and Coastal Zone Management Commission
Cindy Goldstein, Chair
1066 Seahaven Drive
Mamaroneck, New York 10543

Westchester County Department of Health
Attn: Paul Kutzy, Acting Regional Director
145 Huguenot Street, 8th floor
New Rochelle, New York 10801

New York State Department of Environmental Conservation - Region 3
Attn: Martin Brand, Regional Director

Region 3
21 South Putt Corners Road
New Paltz, New York 12561

**New York State Department of Environmental Conservation Bureau of Flood
Protection and Dam Safety**
Attn: William Nechamen, CFM
625 Broadway
4th Floor
Albany, New York 12233

New York State Department of State Division of Coastal Resources
Attn: George Stafford, Director
41 State Street
Suite 930
Albany, New York 12231

INTERESTED AGENCIES

Village of Mamaroneck Board of Trustees
Norman S. Rosenblum, Mayor
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck
Betty-Ann Sherer, Land Use Coordinator
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Board of Architectural Review
Attn: J. Malte Stoeckhert, Chair
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Flood Mitigation Advisory Committee
Attn: Peggy Jackson, Chair
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Committee for the Environment
Attn: Mark Karell and Monica Barach, Co-chairs
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Board of Traffic Commissioners
Attn: Jack Yannuzzi, Chair
Village Hall

169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Zoning Board of Appeals

Attn: Barry Weprin, Chair
Village Hall
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Fire Department

Attn: Craig Castarella, Chief
146 Palmer Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Police Department

Attn: Christopher Leahy, Chief
123 Mamaroneck Avenue
Mamaroneck, New York 10543

Village of Mamaroneck Department of Public Works

Attn: Tony Iacovelli, General Foreman
313 Fayette Avenue
PO Box 369
Mamaroneck, New York 10543

Village of Mamaroneck Building Department

Attn: Dan Gray, Building Inspector
169 Mt. Pleasant Avenue
Mamaroneck, New York 10543

Westchester County Planning Board

Attn: Jeremiah Lynch, Chair
148 Martine Avenue
White Plains, New York 10601

Westchester County Department of Transportation

Attn: Kevin Roseman, Traffic Engineer
148 Martine Avenue
White Plains, New York 10601

Westchester County Department of Public Works

Attn: Ralph Butler, Commissioner
148 Martine Avenue
White Plains, New York 10601

Westchester County Department of Environmental Facilities

Attn: Thomas Lauro, P.E., Commissioner
270 North Avenue, 6th Floor
New Rochelle, New York 10601

Westchester Joint Water Works

Attn: Tony Conetta, Manager
1625 Mamaroneck Avenue
Mamaroneck, New York 10543

Town of Mamaroneck

Office of the Town Clerk
Mamaroneck Town hall
740 West Boston Post Road
Mamaroneck, New York 10543

United States Army Corps of Engineers

New York District, Eastern Permits Section
U.S. Army Engineer District, New York
26 Federal Plaza
New York, New York 10278-0090

Federal Emergency Management Agency

Region 2
Mitigation Division
Michael Moriarty, Director
26 Federal Plaza
New York, New York 10278

Mamaroneck Union Free School District

Dr. Robert I. Shaps
Superintendent
1000 West Boston Post Road
Mamaroneck, New York 10543

New York State Office of Parks, Recreation and Historic Preservation

Field Services Bureau
P.O. Box 189, Peebles Island
Waterford, New York 12188-0189

New York State Department of Transportation Region 8

Attn: William Gorton, P.E.
4 Burnett Boulevard
Poughkeepsie, New York 12603

Other required filings:

Environmental Notice Bulletin

New York State Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-1750

SCOPING DOCUMENT
Draft Environmental Impact Statement

Draft 8/24/15

Name of Proposed Action:

Hampshire Country Club

Planned Residential Development Project

Location: 1025 Cove Road
Village of Mamaroneck, Westchester County, New York

SEQRA Classification: Unlisted

Lead Agency:

Village of Mamaroneck Planning Board

Prepared By:

VHB Engineering, Surveying and Landscape Architecture, PC

50 Main Street, Suite 360

White Plains, New York 10606

914-467-6600

Contacts:

Gina Martini, AICP

Michael Junghans, PE

Date Adopted: _____

**DRAFT
SCOPING DOCUMENT
HAMPSHIRE COUNTRY CLUB
DRAFT ENVIRONMENTAL IMPACT STATEMENT**

INTRODUCTION

A Draft Environmental Impact Statement (DEIS) will be prepared in accordance with the requirements of 6 NYCRR Part 617.9, to assess the potentially significant adverse environmental impacts of the proposed Planned Residential Development project on the site of the existing Hampshire Country Club. The proposed development site is located at 1025 Cove Road, in the Village of Mamaroneck, Westchester County, New York.

PROJECT SCOPING

This Scoping Document contains the items described in 6 N.Y.C.R.R. Part 617.8(F) (1) through (6), and identifies the potentially significant adverse environmental impacts of the Proposed Action, and the mitigation measures for any such impacts that will be addressed in the DEIS.

DESCRIPTION OF THE PROPOSED ACTION

Hampshire Recreation, LLC and Toll Brothers (the "Applicant") propose a new planned residential development consisting of 105 units on a portion of the Hampshire Country Club Property on Cove Road in Mamaroneck.

The Hampshire Country Club Property consists of 106.2 acres developed with recreational membership club facilities located mainly within the Village of Mamaroneck ("Village"), with a small portion located within the Town of Mamaroneck ("Club Property"). The majority of the Club's golf course, as well as several parking lots, are located on a 94.5 acres portion of the Club Property within the Village's R-20 Zoning District. A small portion of the golf course is also located on a 7.3 acre portion of the Club Property within the Town of Mamaroneck's R-30 Zoning District. The Club's clubhouse, tennis courts, pool and several parking areas are located on a 4.4 acre portion of the Club Property within the Village's MR Zoning District.

The proposed Planned Residential Development (PRD) would be built on the 94.5 acre portion of the Club property located within the Village's R-20 Zoning District. A total of 105 residential units (44 single family lots and 61 attached Carriage Homes), parking areas, 8 tennis courts and common open space are proposed on this portion of the Club Property. The golf course would be eliminated in connection with the Proposed Action. No development of any kind is

proposed in the portions of the Club Property located in the Town of Mamaroneck or in the Village's MR Zoning District. The existing membership club facilities located on the MR portion of the Club Property (supporting a clubhouse, pool and parking areas) would remain.

The Proposed Action requires Subdivision and Site Plan approval in connection with the development of the PRD. A Special Permit is also required to develop the PRD, as well as maintain the membership club, tennis courts and parking facilities located on the R-20 portion of the Club Property. Several other approvals are also required, as described below.

REQUIRED APPROVALS

At this time, it is anticipated that the following approvals and permits will be required:

Type of Approval	Agency
SEQRA Subdivision approval Site Plan approval Special Permit Wetland Permit	Village of Mamaroneck Planning Board
LWRP Consistency Determination	Harbor and Coastal Zone Management Commission (HCZM)
Floodplain Development Permit Stormwater Pollution Prevention Permit	Village of Mamaroneck Building Department
Water extension Sanitary Sewer extension	Westchester County Health Department
Street Opening Permit	Village of Mamaroneck Department of Public Works
ARB Review (Advisory)	Village of Mamaroneck Board of Architectural Review
Stormwater SPDES Permit Stormwater Pollution Prevention Plan approval	NYS Department of Environmental Conservation

GENERAL SCOPING CONSIDERATIONS

The Applicant will prepare a Draft Environmental Impact Statement (DEIS) addressing all items identified in this Scoping Document. The Applicant will incorporate information from other developments underway or proposed in the local vicinity and include, where appropriate, discussions regarding cumulative adverse impacts.

The DEIS will discuss relevant and material facts, and evaluate the reasonable alternatives to the Proposed Action identified in this Scoping Document. It will be clearly and concisely written in plain language that can be easily read and understood by the public. Highly technical material will be summarized and, if it must be included in its entirety, will be referenced in the DEIS and

included as an appendix. In addition, all project correspondence from involved and interested agencies will be included in an appendix to the DEIS.

The DEIS will be written in the third person without use of the terms I, we, and our. Narrative discussions will be accompanied to the greatest extent possible by illustrative tables and graphics. All graphics will clearly identify the project area. Each potential impact category (such as land use and zoning impacts, and traffic impacts) will be the subject of a separate section describing existing conditions, anticipated impacts, and proposed mitigation.

The full DEIS will be made available to the Lead Agency in both hard copy and electronic formats. The electronic format will be in Adobe Acrobat (.pdf) file. When the DEIS is accepted for public review by the Lead Agency, sufficient hard copies will be provided to allow placement of a copy at the local library and Village Hall for public review during normal business hours. In addition, the full DEIS will be posted on the internet for public review as required by law.

CONTENTS OF THE DEIS

Cover Sheet listing title of project, location, identification as a DEIS, Lead Agency, Applicant, preparer, and relevant dates (i.e. date of document preparation and spaces for dates of DEIS acceptance, public hearing, final date for acceptance of comments). A list of preparers will include the firm name, contact name, address, and phone number for all consultants who helped prepare the document. The Lead Agency and Applicant will be identified with a contact name and a phone number as well.

Table of Contents including listings of primary DEIS sections and subsections, tables, figures, drawings, appendices, and any items that may be submitted under separate cover (and identified as such), with page numbers listed for each.

I Executive Summary

The Executive Summary will include a brief summary description of the Proposed Action and a listing of all potential significant adverse environmental impacts and proposed mitigation measures. A summary will be provided of the approvals and permits required, and of the alternatives to the Proposed Action that are evaluated in the DEIS. The Executive Summary will only include information that is found elsewhere in the main body of the DEIS.

II Description of Proposed Action

A. **Site Location**

1. Narrative and mapping of Club Property
2. Narrative and mapping surrounding neighborhoods within ¼ mile
3. Map of Existing Floodplain

- B. Site History, Existing Uses, Facilities and Utilities**
- C. Zoning**
 - 1. Existing Zoning
 - a. R-20 / MR / R-30 Districts
 - b. PRD Regulations
- D. Proposed Development Plan**
 - 1. Proposed Residential Development
 - a. Compliance with PRD siting criteria
 - b. Maximum Allowable Density of PRD
 - c. Proposed Density
 - d. Proposed Preliminary Subdivision Plat pursuant to Section A348-8 of the Village Subdivision Regulations
 - e. Proposed Site Plan pursuant to Article XI of the Village Zoning Code
 - f. Residential Unit Types and Architectural Design
 - g. Residential Parking
 - h. Proposed landscaping and buffers pursuant to Section 342-16 of the Village Zoning Code
 - 2. Proposed Site Access and Circulation
 - 3. Continuation of Membership Club
 - a. Proposed modifications to club facilities
 - b. Proposed parking for club events
 - 5. Preservation of Open Space
 - 6. Utilities
 - a. Sanitary Sewer
 - b. Water Supply
 - c. Stormwater
 - 7. Floodplain Management
 - a. Revised Floodplains and Base Flood Elevations Post-Development
 - b. Elevation of all structures above the Base Flood Elevation
 - c. Preservation of safe ingress/egress to neighborhood for ordinary and emergency vehicles during flooding
 - 8. Construction Phasing
- E. Project Purpose, Needs and Benefits**
- F. Involved Agencies and Required Approvals**

III Existing Environmental Conditions, Anticipated Impacts and Mitigation

A. Land Use and Zoning

- 1. Existing Conditions
 - a. On Site
 - b. Surrounding Area (within 1/4 mile)
 - c. Relevant Planning Studies
 - i. 2012 Village Comprehensive Plan Update

- ii. Local Waterfront Revitalization Program (LWRP)
- iii. County "Patterns" and Westchester 2025
- d. Critical Environmental Area (CEA)
- 2. Anticipated Impacts
 - a. Describe potential impacts of the Proposed Action in relation to existing land uses on site and surrounding land uses.
 - b. Compliance with the Comprehensive Plan and other documents
 - c. Describe potential impacts on the character of the CEA
- 3. Mitigation

B. Visual and Community Character

- 1. Existing Conditions
 - a. Document existing (pre-development) views toward Club Property from surrounding roadways (Cove Road, Eagle Knolls Road; and abutting homes on Fairway Lane, Cooper Ave. and from Hommocks School)
 - b. Describe the character of local surrounding roadways and neighborhoods
- 2. Anticipated Impacts
 - a. Views to the new development on site from surrounding roadways and areas described above (post-development) (Illustrate with sketches, photo-simulations, or cross sections, as appropriate)
- 3. Mitigation
(Describe proposed architectural character, proposed landscaping and buffering)

C. Wetlands and Waterbodies

- 1. Existing Conditions
 - a. Describe watercourses and ponds on site
 - b. Provide jurisdictional delineations for regulated wetlands
 - i. Army Corps of Engineers
 - ii. Village Freshwater Wetland Ordinance. Provide acreage of regulated wetlands and buffers
 - d. Provide functional analysis of existing wetland communities
 - e. Provide functional analysis of existing ponds
- 2. Anticipated Impacts
 - a. Preservation of watercourses and ponds
 - b. Describe regulated activities and permits required for those activities
 - i. Encroachment into wetland to relocate tennis courts
- 3. Mitigation

*ecological resources
- hydrology
- water quality
- Biological diversity
- environmental
and flood mitigation*

D. Vegetation and Wildlife

- 1. Existing Conditions
 - a. Vegetation – provide mapping of vegetative communities on site

M. Construction

1. Description of construction phasing and schedule
2. Anticipated Impacts
 - a. Identification of anticipated short-term construction impacts from site preparation, infrastructure and project construction
3. Mitigation
 - a. Discuss construction management techniques, control plans and best management practices to be employed

IV Alternatives

1. No Action
2. R-20 Zoning: Conventional Subdivision
3. Multi-story condominium with preserved golf course

V Significant Adverse Impacts That Cannot be Avoided

1. Long Term
2. Short Term Construction Impacts (including mitigation measures)

VI Growth Inducement

VII Effects on Energy and Irreplaceable Commitment of Resources

VIII Appendix

- A. SEQRA Documentation (EAF, Adopted Scoping Document)
- B. Other Project Correspondence
- C. Proposed Zoning Code amendments
- D. Technical Studies
 - Natural Resource Reports (Wetlands, Vegetation and Wildlife)
 - Stormwater Management Report
 - Phase 1A Cultural Resources Report
 - Traffic Impact Study
 - Flooding Modeling
 - Coastal Assessment Form

- b. Anticipated property taxes to be generated by the Project
- c. Employment opportunities including short term construction jobs
- 3. Mitigation

K. Community Facilities and Services

- 1. Existing Conditions
 - a. Schools (including enrollment projections and capacities)
 - b. Police
 - c. Fire Protection/EMS
 - d. Public Works
 - e. Open Space and Recreation
- 2. Anticipated Impacts
 - a. Schools
 - b. Police
 - c. Fire Protection/EMS
 - d. Public Works
 - e. Open Space and Recreation
- 3. Mitigation

L. Cultural Resources

- 1. Existing Conditions
 - a. Prepare and submit Notice of Project to NYS Office of Parks, Recreation and Historic Preparation (NYOPRHP) Cultural Resources Information System (CRIS)
 - b. Upon receipt of comment from NYOPRHP, if required prepare and submit Phase IA cultural resources report for resources on site and within the ½-mile study buffer
 - i. Define the Area of Potential Effect (APEs) for both direct and indirect effects
- 2. Anticipated Impacts
 - a. Describe potential direct and indirect impacts to historic buildings and structures and cultural landscapes on site and within indirect APEs
 - b. Describe potential direct impacts to archaeological sites on-site
- 3. Mitigation
 - a. If needed, describe the Section 14.09 and, if applicable, Section 106 phases that will be required following the Phase IA studies for historic buildings and structures and cultural landscapes with the on-site and indirect APEs for the project
 - b. If needed, describe the Section 14.09 and, if applicable, Section 106 phases that will be required following the Phase IA studies for archaeological sites within the direct effect APE for the project.

G. Water Supply

1. Existing Conditions
2. Anticipated Impacts (water demand for residential uses)
3. Mitigation

H. Sanitary Sewer/Wastewater

1. Existing Conditions
2. Anticipated Impacts (wastewater generation for residential uses)
3. Mitigation

I. Traffic

1. Existing Conditions – describe surrounding road system
 - a. Existing Traffic Volumes for the Weekday Peak AM and PM Hours at the following intersections:
 - i. US 1 and Hommocks Road/Weaver Street (Signalized)
 - ii. Hommocks Road and Eagle Knolls Road (Unsignalized)
 - iii. East Cove Road and Orienta Avenue (Unsignalized)
 - iv. Orienta Avenue/Delancey Avenue and US 1 (Signalized)
 - v. Old Boston Post Road and Cooper Avenue
 - vi. Old Boston Post Road and US 1
 - vii. Fairway Lane and Orienta Avenue
 - b. Capacity Analysis (Level of Service) for each of the above intersections (SYNCHRO Analysis)
 - c. Existing parking count for club
 - d. Describe existing character of surrounding streets
2. Anticipated Impacts
 - a. “No Build” Traffic Volumes/Capacity Analysis - to include background traffic growth and other proposed projects in the area (to be provided by the Town)
 - b. “Build” Traffic Volumes/Capacity Analysis - to include anticipated trip generation for the Proposed Action
 - c. Sight Distance at Site Access
 - d. Parking Analysis
 - i. Club uses post-development
 - ii. Residential uses post-development
 - e. Describe potential impacts to character of surrounding streets
3. Mitigation

J. Socioeconomics

1. Existing Conditions
 - a. Demographics
 - b. Tax Generation
2. Anticipated Impacts
 - a. Demographics

- b. Wildlife - provide data investigating any rare, threatened or endangered species on site
- 2. Anticipated Impacts
 - a. Describe potential impacts to vegetative communities, as well as potential impacts to wildlife on site
- 3. Mitigation

E. Stormwater Management

- 1. Existing Conditions
 - a. Describe pre-development drainage conditions
- 2. Anticipated Impacts
 - a. Stormwater Quantity (post-development conditions)
 - b. Stormwater Quality
- 3. Mitigation (stormwater management plan)

F. Geology and Soils

- 1. Existing Conditions
 - a. Soils map
 - b. Subsurface conditions
- 2. Anticipated Impacts
 - a. preliminary grading plan
 - b. potential blasting areas
- 3. Mitigation

G. Floodplain Management

- 1. Existing Conditions
 - a. Describe 100-year floodplain
 - b. Flood modeling of Club Property and immediate vicinity for existing conditions to evaluate flood patterns and velocities
- 2. Anticipated Impacts
 - a. Flood modeling of Club Property and immediate vicinity post-development
 - i. Hydraulic modeling establishing "no rise" in base flood elevation or flood levels during base flood discharge as a result of development
 - ✱ ii. "No adverse affect" modeling establishing no physical damage to adjacent properties
 - b. Compliance with Purpose and Objectives of Village's Flood Damage Prevention Regulations (Chapter 186 of the Village Code)
 - i. Compliance with applicable Construction Standards (Section 186-5 of the Village Code)
 - ii. Compliance with Variance Standards, if necessary (Section 186-6 of the Village Code)
- 3. Mitigation Measures

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Sponsor Information.

Name of Action or Project: Hampshire Country Club - Planned Residential Development (PRD)		
Project Location (describe, and attach a general location map): 1025 Cove Road, Village of Mamaroneck, Westchester County, NY (see Location map)		
Brief Description of Proposed Action (include purpose or need): The Applicant proposes a new residential development on a portion of the Hampshire Country Club Site on Cove Road in Mamaroneck. The proposed Planned Residential Development (PRD) is within the Village of Mamaroneck portion of the project site zoned R20 (not in the MR zoned Village portion of the site, or the R30 portion of the site in the Town of Mamaroneck). The proposed action requires a Special Permit, Subdivision, Site Plan and other approvals (noted on pg 2). A total of 105 residential units (44 single family lots and 61 attached Carriage Homes), 8 tennis courts and common open space are proposed. The existing membership club located on the MR portion of the site (clubhouse, pool and parking) will remain, but the golf course will be replaced by the proposed homes and open space. 94.5 acres of the site are located in the R20 district of the Village of Mamaroneck; 4.4 acres are located in the MR district of the Village of Mamaroneck and 7.3 acres are located in the Town of Mamaroneck (total site in both municipalities is 106.2 acres). No development of any kind is proposed in the Town portion of the site or in the MR district in the Village.		
Name of Applicant/Sponsor: Hampshire Recreation, LLC and Toll Brothers	Telephone: 646-723-4750	
	E-Mail:	
Address: 60 Cutter Mill Road, Suite 513		
City/PO: Great Neck	State: NY	Zip Code: 11021
Project Contact (if not same as sponsor; give name and title/role): Thomas Nappi	Telephone: (917) 547-2987	
	E-Mail: tnappi@nwradvisors.com	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): (same)	Telephone:	
	E-Mail:	
Address:		
City/PO:	State:	Zip Code:

B. Government Approvals

B. Government Approvals Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Planning Bd - subdivision, site plan, special permit, floodplain management, wetland permit	June 26, 2015
c. City Council, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Mamaroneck Village Coastal Management Commission - LWRP compliance	June 26, 2015
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	West. Co. Health Dept. - water and sanitary sewer approvals and Westchester Co. Planning - review	
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	NYSDEC- Stormwater Pollution Prevention Plan (SWPP). NYSDOS - LWRP consistency	
h. Federal agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	potentially ACOE; FEMA map revision	
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If Yes,		
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

C. Planning and Zoning

C.1. Planning and zoning actions.		
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<ul style="list-style-type: none"> If Yes, complete sections C, F and G. If No, proceed to question C.2 and complete all remaining sections and questions in Part 1 		
C.2. Adopted land use plans.		
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
If Yes, identify the plan(s):		
<u>Local Waterfront Revitalization Program (LWRP)</u>		

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If Yes, identify the plan(s):		

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. Yes No
If Yes, what is the zoning classification(s) including any applicable overlay district?
R20 (single family residential)

b. Is the use permitted or allowed by a special or conditional use permit? Yes No

c. Is a zoning change requested as part of the proposed action? Yes No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? Mamaroneck Union Free School District

b. What police or other public protection forces serve the project site?
Village of Mamaroneck Police Department

c. Which fire protection and emergency medical services serve the project site?
Village of Mamaroneck Fire Department

d. What parks serve the project site?
Site is a private country club with golf course and recreation facilities. In addition, many public parks and recreation facilities are nearby, including Harbor Island Park, Hommocks Park, Flint Park and Hommocks Conservation area.

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Residential and open space.

b. a. Total acreage of the site of the proposed action? 94.5 acres

b. Total acreage to be physically disturbed? 57.8 acres

c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 106.2 acres

c. Is the proposed action an expansion of an existing project or use? Yes No

i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? Yes No

If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
Residential and open space - PRD with detached units on lots and attached units.

ii. Is a cluster/conservation layout proposed? Yes No

iii. Number of lots proposed? 105 - PRD

iv. Minimum and maximum proposed lot sizes? Minimum 3158 sf Maximum 15,500 sf

e. Will proposed action be constructed in multiple phases? Yes No

i. If No, anticipated period of construction: 24-36 months

ii. If Yes:

• Total number of phases anticipated 1

• Anticipated commencement date of phase 1 (including demolition) Oct month 2016 year

• Anticipated completion date of final phase Oct month 2020 year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

18-24 months for road and related improvements and another 2 to 3 years for homebuilding

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres: (see above)

iii. Will proposed action cause or result in disturbance to bottom sediments? Yes No

If Yes, describe: _____

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No

If Yes:

- acres of aquatic vegetation proposed to be removed: _____
- expected acreage of aquatic vegetation remaining after project completion: _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No

If Yes:

i. Total anticipated water usage/demand per day: 39,490 GPD potable (not irrigation) gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No

If Yes:

- Name of district or service area: Westchester Joint Water Works
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No

If Yes:

i. Total anticipated liquid waste generation per day: 39,490 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): sanitary wastewater

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No

If Yes:

- Name of wastewater treatment plant to be used: Mamaroneck Sewage Treatment Plant
- Name of district: Mamaroneck Sewer District
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

<ul style="list-style-type: none"> Do existing sewer lines serve the project site? Will line extension within an existing district be necessary to serve the project? <p>If Yes:</p> <ul style="list-style-type: none"> Describe extensions or capacity expansions proposed to serve this project: _____ 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>iv. Will a new wastewater (sewage) treatment district be formed to serve the project site?</p> <p>If Yes:</p> <ul style="list-style-type: none"> Applicant/sponsor for new district: _____ Date application submitted or anticipated: _____ What is the receiving water for the wastewater discharge? _____ 	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):</p> <p>_____</p> <p>_____</p>	
<p>vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____</p> <p>_____</p> <p>_____</p>	
<p>e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction?</p> <p>If Yes:</p> <p>i. How much impervious surface will the project create in relation to total size of project parcel?</p> <p>_____ Square feet or _____ 12.2 acres (impervious surface)</p> <p>_____ Square feet or _____ 94.5 acres (parcel size)</p> <p>ii. Describe types of new point sources. _____ pipes, swales, curbs, concentrated flows of stormwater</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?</p> <p>On-site stormwater management facilities/on-site surface waters</p> <p>_____</p> <ul style="list-style-type: none"> If to surface waters, identify receiving water bodies or wetlands: _____ On-site ponds, ultimately to Long Island Sound Will stormwater runoff flow to adjacent properties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
<p>iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations?</p> <p>If Yes, identify:</p> <p>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)</p> <p>_____</p> <p>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)</p> <p>_____</p> <p>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)</p> <p>_____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>If Yes:</p> <p>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>ii. In addition to emissions as calculated in the application, the project will generate:</p> <ul style="list-style-type: none"> _____ Tons/year (short tons) of Carbon Dioxide (CO₂) _____ Tons/year (short tons) of Nitrous Oxide (N₂O) _____ Tons/year (short tons) of Perfluorocarbons (PFCs) _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆) _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs) _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs) 	

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No
 If Yes:
 i. Estimate methane generation in tons/year (metric): _____
 ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No
 If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? Yes No
 If Yes:
 i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.
 ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____ N/A
 iii. Parking spaces: Existing 113 (in R20) Proposed 77 to remain Net increase/decrease -36 (+driveways)
 iv. Does the proposed action include any shared use parking? Yes No
 v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:
addition of new and relocated roadways on site (4800 linear feet)

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? Yes No
 vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No
 viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No
 If Yes:
 i. Estimate annual electricity demand during operation of the proposed action: _____
 ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____
 iii. Will the proposed action require a new, or an upgrade to, an existing substation? Yes No

l. Hours of operation. Answer all items which apply.
 i. During Construction:
 • Monday - Friday: TBD- as per local ordinance
 • Saturday: TBD- as per local ordinance
 • Sunday: none
 • Holidays: none
 ii. During Operations:
 • Monday - Friday: _____
 • Saturday: _____
 • Sunday: _____
 • Holidays: _____

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:</p> <p>_____</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe: _____</p> <p>_____</p>	
<p>n. Will the proposed action have outdoor lighting? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:</p> <p>TBD - potential tennis court lighting</p> <p>_____</p>	
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Describe: _____</p> <p>_____</p>	
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____</p> <p>_____</p> <p>_____</p>	
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally describe proposed storage facilities: _____</p> <p>_____</p>	
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>ii. Will the proposed action use Integrated Pest Management Practices? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> • Construction: _____ tons per _____ (unit of time) • Operation: _____ tons per _____ (unit of time) <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> • Construction: _____ • Operation: _____ <p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> • Construction: _____ • Operation: _____ 	

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

- Urban Industrial Commercial Residential (suburban) Rural (non-farm)
- Forest Agriculture Aquatic Other (specify): private golf club, public middle school, waterfront uses

ii. If mix of uses, generally describe: _____

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	2.7	13.56	+10.86
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	8.08	45.62	+37.54
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	2.9	2.9	0
• Wetlands (freshwater or tidal)	1.12	1.12	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: <u>golf course & landscaped/open space</u>	79.7	31.3	-48.4

v. Is the project site subject to an institutional control limiting property uses? Yes No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? Yes No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? _____ 6 to 12 feet

b. Are there bedrock outcroppings on the project site? Yes No
 If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site:

CtC, CrC, UIC	_____	41 %
UC	_____	59 %
	_____	%

d. What is the average depth to the water table on the project site? Average: _____ TBD feet

e. Drainage status of project site soils:

<input checked="" type="checkbox"/> Well Drained:	_____	35 % of site
<input checked="" type="checkbox"/> Moderately Well Drained:	_____	0 % of site
<input checked="" type="checkbox"/> Poorly Drained	_____	65 % of site

f. Approximate proportion of proposed action site with slopes:

<input checked="" type="checkbox"/> 0-10%:	_____	84 % of site
<input checked="" type="checkbox"/> 10-15%:	_____	1 % of site
<input checked="" type="checkbox"/> 15% or greater:	_____	15 % of site

g. Are there any unique geologic features on the project site? Yes No
 If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? Yes No

ii. Do any wetlands or other waterbodies adjoin the project site? Yes No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? Yes No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

• Streams:	Name _____	Classification _____
• Lakes or Ponds:	Name _____	Classification _____
• Wetlands:	Name Federal Wetland, Tidal Wetlands	Approximate Size Federal Wetland:0...
• Wetland No. (if regulated by DEC)	No DEC regulated wetlands	

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? Yes No
 If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? Yes No

j. Is the project site in the 100 year Floodplain? Yes No

k. Is the project site in the 500 year Floodplain? Yes No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? Yes No
 If Yes:

i. Name of aquifer: _____

<p>m. Identify the predominant wildlife species that occupy or use the project site: <u>typical suburban species on existing</u> <u>golf course</u></p>	<p>_____</p> <p>_____</p> <p>_____</p>
<p>n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: i. Describe the habitat/community (composition, function, and basis for designation): _____ _____ ii. Source(s) of description or evaluation: _____ iii. Extent of community/habitat: • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres</p>	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, give a brief description of how the proposed action may affect that use: _____ _____</p>	
<p>E.3. Designated Public Resources On or Near Project Site</p>	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No i. If Yes: acreage(s) on project site? _____ ii. Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes: i. CEA name: <u>The Hommocks Salt Marsh Complex, The Hammocks Salt Marsh Complex, Hommock's Conservation Area, Long Island ...</u> ii. Basis for designation: <u>Important coastal fish & wildlife habitat, Protect water & natural area, Exceptional or unique ch...</u> iii. Designating agency and date: <u>Date:8-31-89, Date:2-2-85, Date:1-31-90, Date:2-21-89, Agency:Mamaroneck, Town of, Agen...</u></p>	

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places? Yes No

If Yes:

i. Nature of historic/archaeological resource: Archaeological Site Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based: _____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? Yes No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? Yes No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? Yes No

If Yes:

i. Identify resource: (Hommocks Conservation Area is southwest of the site)

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): (natural area)

iii. Distance between project and resource: _____ less than 0.5 miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? Yes No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? Yes No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

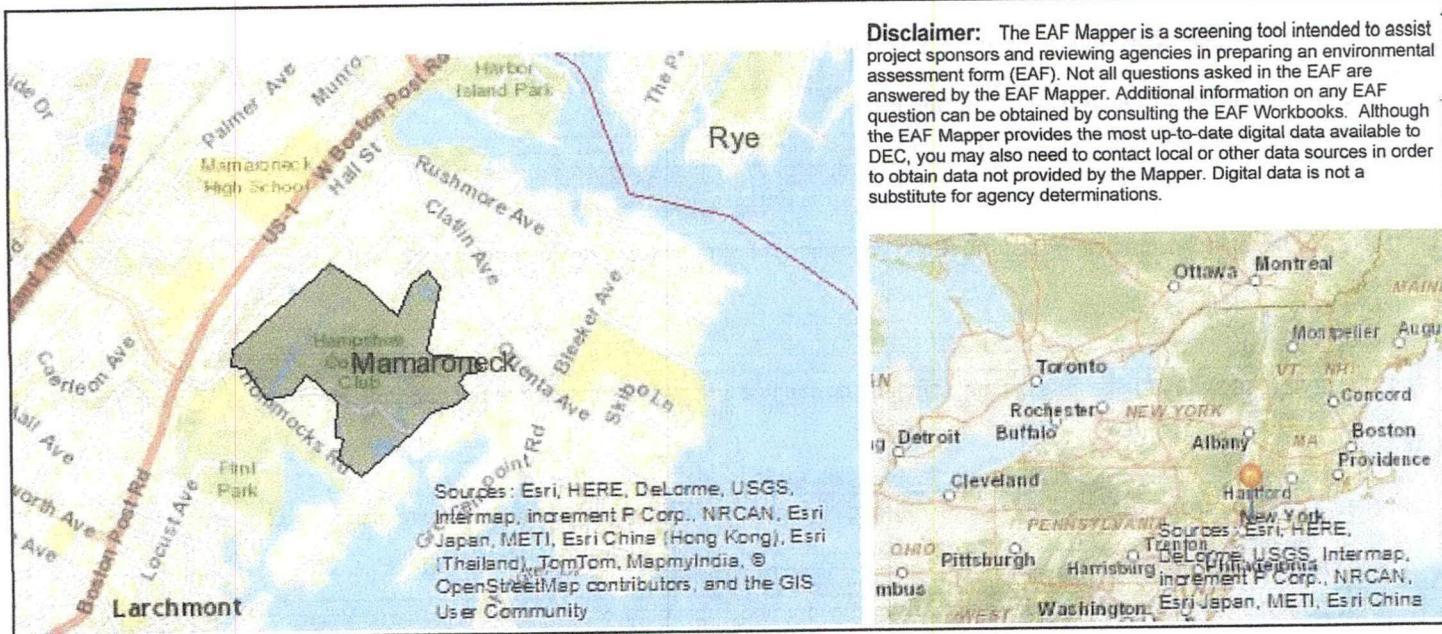
If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

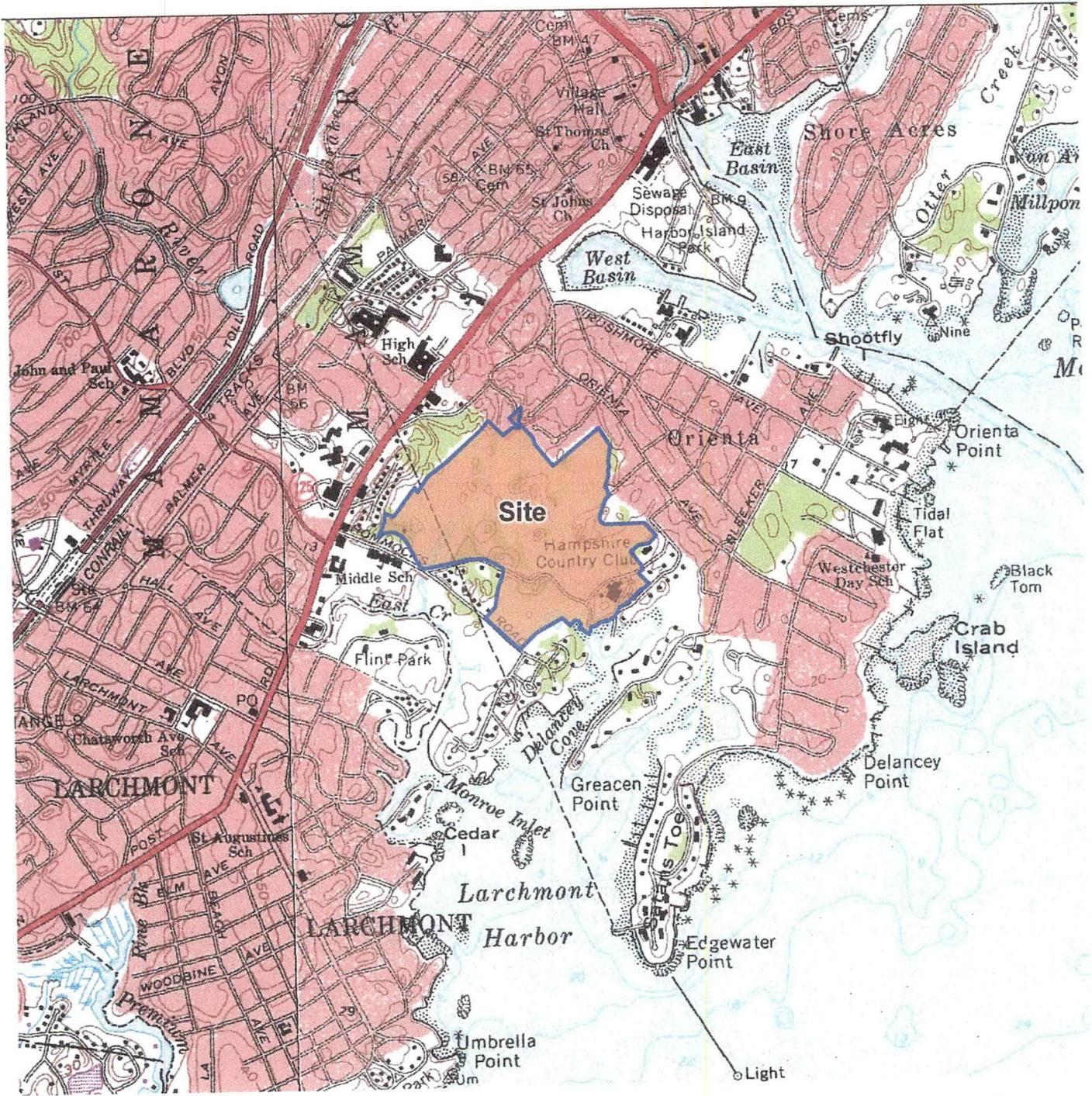
Applicant/Sponsor Name Bonnie Von Ohlsen, VHB for applicant Date 6/29/15

Signature *Bonnie Von Ohlsen* Title VHB Director of Environ. Planning and Landsc. Arch.

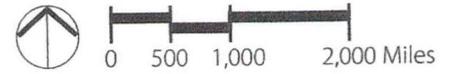


B.i.i [Coastal or Waterfront Area]	Yes
B.i.ii [Local Waterfront Revitalization Area]	Yes
C.2.b. [Special Planning District]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters, Tidal Wetlands
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No

E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d. [Critical Environmental Area]	Yes
E.3.d [Critical Environmental Area - Name]	The Hommocks Salt Marsh Complex, East Creek, Hommock's Conservation Area, The Hammocks Salt Marsh Complex, Long Island Sound, Hampshire Country Club
E.3.d.ii [Critical Environmental Area - Reason]	Important coastal fish & wildlife habitat, Exceptional or unique character as an aesthetically important area, Protect water & natural area
E.3.d.iii [Critical Environmental Area -- Date and Agency]	Date:8-31-89, Date:2-22-89, Date:2-2-85, Date:1-31-90, Date:9-16-89, Agency:Mamaroneck, Town of, Agency:Larchmont, Village of, Agency:Westchester County
E.3.e. [National Register of Historic Places]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No



 Site Location



SOURCE: USGS Mamaroneck, New York



HAMPSHIRE COUNTRY CLUB
Village of Mamaroneck, New York

Site Location Map

Exhibit

1

WORK SESSION
ITEM #9

No Attachment

WORK SESSION
ITEM #10

NEW BUSINESS