

William Wenzel, Town Supervisor
Jennifer Howe, Town Clerk
Brandy Fall, Deputy Town Clerk



Andrew Lucks, Council Member
Dianne Grant, Council Member
Francis R. Potter, Council Member
Michael Santulli, Council Member

5853 Western Turnpike
Duanesburg, New York 12056

Town of Duanesburg

Schenectady County

P# 518-895-8920
F# 518-895-8171

Friday, December 30, 2022

Town of Duanesburg is inviting you to a scheduled Zoom meeting.
Topic: Town of Duanesburg's Town Board Meeting
Time: 9:00 a.m.

Join Zoom Meeting

Meeting ID: 825 1426 6463

Passcode: 618625

Dial in by Phone: 1-646-558-8656

Meeting ID: 825 1426 6463

Passcode: 618625

Town Board Meeting Agenda

Meeting Time: 9:00AM

Call to order
Pledge of Allegiance

Public Hearing: The Town contracting for fire protections services within Town of Duanesburg Fire Protection District No. 2 and No. 3 pursuant to applicable NYS laws. The town proposing to contract for fire protection and certain emergency services with the Mariaville Volunteer Fire Department, Inc. in Fire Protection District No. 2, and the Burtonsville Volunteer Fire Department, the Village of Delanson, and the Village of Esperance all in Fire Protection District No. 3.

Approval of minutes for: Town Board Meeting on Thursday December 8, 2022

Payment of Claims

Business Meeting:

1. Motion to authorize the Town Supervisor to take the necessary steps to expand Penflex's services provided in connection with the LOSAP program.
2. Motion to enter into and authorize the Town Supervisor to execute the Fire Protection Contracts for calendar year 2023.
3. Motion to approve and authorize the Town Supervisor to execute the 2023 agreements with Omnis, Civic Plus, H2H, DVAC, Village of Delanson and Town of Princetown.

PLEASE NOTE: AGENDA ITEMS MAY BE ADDED OR DELETED WITHOUT NOTICE

4. **Motion to provisionally appoint Christopher Parslow as Town Building Inspector.**
5. **Motion to appoint Dale Warner as Assistant Town Building Inspector.**
6. **Motions to approve needed Budget transfers for 2022.**

Privilege of the Floor:

Comments are limited to 5 minutes per person. Be respectful. Address the entire Town Board. Individual members are not to be singled out. Speak of issues related to Town business. There will be no tolerance for personal attacks on Board Members. The board reserves the right to ask that your question be put in writing and to be submitted to the Town Clerk to then be distributed to the Town Board. Questions will be answered in a timely manner and mailed to the resident.

**LEGAL NOTICE
NOTICE OF PUBLIC HEARINGS
TOWN BOARD
TOWN OF DUANESBURG**

PLEASE TAKE NOTICE, that the Town Board of the Town of Duanesburg, New York, will meet at the Town Offices of Duanesburg located at 5853 Western Turnpike, on **Friday, December 30, 2022 at 9:00 a.m.** for the purpose of hearing all persons interested in the matter of:

The Town contracting for fire protections services within Town of Duanesburg Fire Protection District No. 2 and No. 3 pursuant to applicable NYS laws. The Town is proposing to contract for fire protection and certain emergency services with the Mariaville Volunteer Fire Department, Inc. in Fire Protection District No. 2, and the Burtonsville Volunteer Fire Department, the Village of Delanson and the Village of Esperance all in Fire Protection District No. 3.

Persons may appear at the hearing in person or by agent, and may also submit written comments to the Town Board prior to or at such hearing.

BY ORDER OF THE TOWN BOARD
TOWN OF DUANESBURG

Dated: December 8, 2022

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. _____-2022

December 30, 2022

WHEREAS, The Town of Duanesburg has a LOSAP program for the Mariaville Volunteer Fire Company that provides fire services in the Town of Duanesburg Fire Protection District no. 2;

WHEREAS, The Town of Duanesburg would like Penflex to prepare the footnote disclosures to comply with the OSC’s LOSAP audit requirement for FYE 2020 and going forward for each year thereafter for an additional fee of \$495 per year;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Duanesburg Town Board hereby authorizes the Town Supervisor to take the necessary steps to expand Penflex’s services provided in connection with the LOSAP program as set forth above for an additional fee of \$495 per year starting with FYE 2020 and going forward.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its meeting on December 30, 2022.

William Wenzel, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Town Board Members:

Dianne Grant	Yea	Nay	Abstain
Michael Santulli	Yea	Nay	Abstain
Rick Potter	Yea	Nay	Abstain
William Wenzel	Yea	Nay	Abstain
Andrew Lucks	Yea	Nay	Abstain

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION __ - 2022

December 30, 2022

WHEREAS, the Town has established Fire Protection District No. 2 and Fire Protection District No. 3 (the “Fire Protection Districts”); and

WHEREAS, the Town, pursuant to Town Law § 184, must provide for the furnishing of fire protection within the Fire Protection Districts; and

WHEREAS, pursuant to Town Law § 184(8), the Town Board may contract for the provision of fire protection services, after a public hearing held pursuant to public notice, if the Town Board finds that it is in the public interest to do so; and

WHEREAS, the Town Board held a duly noticed public hearing on December 30, 2022 at 9am and heard all persons interested in the subject concerning the 2023 Fire Protection Contracts; and

WHEREAS, for calendar year 2023 the Town Board wishes to execute fire protection contracts with The Mariaville Volunteer Fire Department, Inc., in Fire Protection District 2; the Village of Esperance in Fire Protection District 3; the Village of Delanson in Fire Protection District 3; and The Burtonsville Volunteer Fire Department, Inc. in Fire Protection District 3; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board finds that it is in the public interest to enter into the attached Fire Protection Contracts and authorizes the Town Supervisor to execute the Contracts for calendar year 2023.

BE IT FURTHER RESOLVED, that the Town Board waives, for good cause shown, the requirement to timely provide the information set forth in Schedule A of the Fire Protection Contracts.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its special meeting on December 30, 2022.

William Wenzel, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Town Board Members:

**CONTRACT FOR FIRE PROTECTION AND EMERGENCY SERVICES
BETWEEN
THE TOWN OF DUANESBURG
AND
THE MARIAVILLE VOLUNTEER FIRE DEPARTMENT, INC.**

This Contract made this 30th day of December 2022 pursuant to Town Law §184 between the Town of DUANESBURG ("TOWN") a municipal corporation organized under the laws of the State of New York, acting on behalf of Fire Protection District No. 2 ("FPD2") of the TOWN and THE MARIAVILLE VOLUNTEER FIRE DEPARTMENT, INC. (hereinafter "FIRE DEPARTMENT"), a domestic, not-for-profit, special fire corporation organized and existing under the laws of the State of New York, with its principal place of business and operations in Schenectady County New York.

WITNESSETH:

WHEREAS, by Resolution of the Town Board duly adopted on October 4, 1951 the TOWN established FPD2 in a portion of the TOWN for the purposes of furnishing fire protection within FPD2, the precise boundaries of FPD2 are more fully described in the establishing Resolution; and

WHEREAS, the TOWN desires to contract with the FIRE DEPARTMENT for the furnishing of fire protection and emergency services to FPD2 for a definite period of time from **January 1, 2023 through December 31, 2023**; and

WHEREAS, as a condition precedent to entering into negotiations for this Contract, the FIRE DEPARTMENT shall file with the TOWN in a format acceptable to the Town Board a statement (budget) itemizing the estimated costs of the FIRE DEPARTMENT attributable to the provision of services under this contract pursuant to Town Law §184(1-a) including all of the information requested in SCHEDULE "A" annexed hereto, for the Town Board's review and consideration in determining the amount of compensation that is reasonable, necessary, and appropriate for the FIRE DEPARTMENT to provide the contracted services under this Contract; and

WHEREAS, pursuant to Town Law §184(2) a public hearing was duly held at the Town Hall after publication of the requisite notices for such hearing, and such hearing having been called for the purpose of reviewing the terms of this Contract and entertaining public comment thereon; and

WHEREAS, following said public hearing and pursuant to Town Law §184(1) the TOWN, by lawfully enacted resolution of the Town Board, has duly authorized this contract with the FIRE DEPARTMENT for fire protection and emergency services to said FPD2 upon the terms and provisions set forth herein; and

WHEREAS, the making of this Contract has been duly authorized by the governing board of the FIRE DEPARTMENT and/or membership as may be required by the bylaws of the FIRE DEPARTMENT and the signatory hereto on behalf of the FIRE DEPARTMENT warrants that all of the prerequisites of the FIRE DEPARTMENT bylaws have been satisfied, all required resolutions of the FIRE DEPARTMENT have been lawfully enacted, and said signatory is authorized to bind the FIRE DEPARTMENT to this Contract.

NOW, THEREFORE, in exchange for the mutual promises and other good and valuable consideration as recited herein, the receipt of which is hereby acknowledged, the TOWN does contract with the FIRE DEPARTMENT to furnish fire protection and emergency services to

FPD2 and the FIRE DEPARTMENT agrees to furnish such services commencing January 1, 2023, in the following manner:

SECTION 1. FIRE DEPARTMENT'S OBLIGATIONS

1.1 DUTIES

FIRE DEPARTMENT agrees to furnish suitable apparatus, equipment, appliances and a sufficient number of properly trained personnel for the furnishing of fire protection and the provisions of emergency services in FPD2 and will timely respond when notified of a fire or other emergent situation within FPD2.

- 1.1.1 "Fire Protection" and "Emergency Services", as used herein, shall be deemed to include among other things: fire suppression, fire prevention, fire prevention education, life safety education, building inspections in conjunction with the Town of Duanesburg Building Inspector and Code Enforcement Officer, emergency medical services, and response to calls for assistance, rescue, or aid of every manner consistent with the corporate purposes of the FIRE DEPARTMENT and its Organizational Statement pursuant to 29 CFR 1910.156(b)(1).

1.2 RESPONSE

Upon dispatch, the FIRE DEPARTMENT will respond to the fire or emergency without delay and with suitable resources and trained personnel. The members of the FIRE DEPARTMENT shall proceed diligently and in a reasonable manner to eradicate the hazard, mitigate the situation, and preserve life and property in connection therewith.

1.3 TRAINING

FIRE DEPARTMENT warrants to TOWN that all firefighters and emergency personnel are appropriately trained and equipped to the current minimum training levels for their respective duty requirements and as mandated by OSHA [29 USC § 655(a)] and the regulations and rules promulgated thereunder including, but not limited to, 29 CFR 1910 subparts (H), (I), and (L) as well as all applicable New York State statutes, rules and regulations including, but not limited to, Labor Law §27-a and 12 NYCRR 800.7.

1.4 STANDARD PROCEDURES

FIRE DEPARTMENT warrants to TOWN that it has in place standard operating procedures or similar written standard policies or protocols for critical operations and will provide TOWN with a copy such current standards upon the execution of this Contract and during the term of this Contract, will immediately provide TOWN any amendments or additions to such standards.

1.5 CORPORATE BYLAWS

FIRE DEPARTMENT warrants to TOWN that it has Bylaws or a Constitution and Bylaws (collectively referred to hereinafter as "Bylaws") governing the corporate operations of the FIRE DEPARTMENT and will provide TOWN with a copy of the current Bylaws upon the execution of this Contract and during the term of this Contract will immediately provide TOWN any amendments or additions to such Bylaws.

1.6 ROSTER

Upon execution of this Contract, or upon any renewal thereof, FIRE DEPARTMENT will provide TOWN with a complete current roster of its members and their respective offices and titles (ex. Firefighter, Chief, President, social, honorary, etc.) and FIRE

DEPARTMENT shall inform TOWN of any additions or deletions to the membership roster as they may occur during the term of this Contract within 30 days of such change.

1.7 OFFICER QUALIFICATIONS

Upon execution of this Contract, or upon any renewal thereof, FIRE DEPARTMENT shall provide TOWN with a copy of its current qualifications for officer requirements for firemanic officers. If no such qualifications currently exist, FIRE DEPARTMENT shall immediately notify TOWN in writing that no such qualifications exist and shall within three months thereafter, develop qualifications for officer requirements and provide them to TOWN.

1.8 FUND RAISING

On a monthly basis and in no event less than 30 days before such event, FIRE DEPARTMENT shall notify TOWN of any planned or proposed fund raising activity. Such notice shall be provided in writing to the Town Clerk. Such notice shall contain a general description of the method which will be used to raise finds and shall specify the time or times when and place or places where such fund raising activity will be conducted. The notice shall also provide the names and contact information of the members serving on the committee overseeing such activity.

1.9 NEW MEMBERS

On a monthly basis, FIRE DEPARTMENT shall submit the names of individuals elected to membership as active firefighters in the FIRE DEPARTMENT and any such individual's election to membership is subject to approval by the Town Board.

1.10 BACKGROUND CHECKS

FIRE DEPARTMENT warrants to TOWN that all firefighters elected to membership are appropriately screened as mandated by Executive Law § 837-o and that the FIRE DEPARTMENT has complied with all relevant provisions of Not-for-Profit Corporation Law §1402 concerning eligibility and attaining membership.

1.11 QUARTERLY REPORTS

On a quarterly basis, by the 15th day of January, April, July, and October of each year this Contract is in effect, the FIRE DEPARTMENT shall submit to TOWN a report relating to the preceding three months detailing:

- 1.11.1 the number of calls received (e.g., responses to alarms, fires, emergencies or calls for assistance of any sort),
- 1.11.2 the nature of the calls (fire, MVA, hazmat, etc.),
- 1.11.3 the total number of fire firefighters responding to the calls,
- 1.11.4 the average number of firefighters responding per call per quarter,
- 1.11.5 the number of time mutual aid was given to other agencies/locales,
- 1.11.6 the number of times mutual aid was received from other agencies/locales,
- 1.11.7 to and from what agencies mutual aid was given and received,
- 1.11.8 the date, time, and nature of any calls for which FIRE DEPARTMENT was dispatched but was unable to have a unit respond to within five minutes of dispatch,
- 1.11.9 the date, time, and nature of any calls for which FIRE DEPARTMENT was dispatched but was unable to be on scene within 14 minutes of dispatch,
- 1.11.10 the number of in-house drills or other training conducted and the total number of firefighters in attendance,

- 1.11.11 a list of planned or upcoming training, schools, or conferences to be attended by FIRE DEPARTMENT'S firefighters personnel DEPARTMENT in the forthcoming six months.
- 1.11.12 as to all matters set forth in section 1.11.11, a statement as to whether such training, etc. is to be conducted outside of the County of Schenectady or outside the State of New York.

(Note: Nothing required to be provided herein is intended or shall be deemed to require the disclosure of patient protected information under HIPAA).

1.12 ANNUAL AUDIT

TOWN may require FIRE DEPARTMENT to conduct an annual audit of its financial records performed by a certified public accountant and the report of said audit together with any management letters will be presented to the TOWN no later than June 1 of the year succeeding the year for which the audit is performed. The cost of such audit shall be a separately delineated and budgeted annual expense in the FIRE DEPARTMENT'S annual budget.

- 1.12.1 Such audit shall contain references and notes regarding the statutorily mandated audit of the Town of Duanesburg FPD2 Length of Service Award Program pursuant to General Municipal Law § 219-a(3).

1.13 CAPITAL EXPENDITURES

FIRE DEPARTMENT will immediately advise TOWN of any plans to purchase, lease, acquire, or dispose of fire apparatus or equipment (including light duty vehicles) with a cost or value in excess of Thirty-five Thousand dollars and of any improvements to or acquisition of real property with a cost or value in excess of Fifty Thousand dollars.

1.14 INSURANCE

FIRE DEPARTMENT agrees to procure and maintain throughout the duration of this Contract Volunteer Firefighters' Benefit Law ("VFBL") insurance, commercial general liability ("CGL") insurance, business automobile insurance, professional (medical) liability insurance (as may be required if emergency medical services are provided), director's and officer's liability insurance, and Workers' Compensation insurance (if applicable) in such minimum limits as set forth on Schedule 'B' annexed hereto. FIRE DEPARTMENT will procure all such insurance for its benefit and the benefit of TOWN and shall name TOWN as "an additional insured on a primary, non-contributory basis". Satisfactory proof of insurance including, but not limited to certificates of insurance in acceptable form shall be provided upon the execution of this Contract. Neither the failure by the TOWN to make demand for such proof of insurance nor the failure by FIRE DEPARTMENT to produce said certificates of insurance shall relieve FIRE DEPARTMENT from the obligation to provide and maintain the insurance coverage of the type and in the amounts so specified with the obligatory additional insured provisions.

1.15 INDEMNITY

To the fullest extent permitted by law, FIRE DEPARTMENT agrees to indemnify and hold harmless TOWN for any claim or suit for personal injury (including death), property damage, professional liability or employer or management liability arising out of the FIRE DEPARTMENT'S operations or the discharge of FIRE DEPARTMENT'S duties on behalf of TOWN in furtherance of this Contract.

1.16 LOSAP

By March 31st of each year this Contract is in effect, FIRE DEPARTMENT shall provide TOWN with a certified list of active firefighters who qualified for a year of service credit for the previous year in the Town of Duanesburg FPD2 Length of Service Award Program.

SECTION 2. TOWN'S OBLIGATIONS

2.1 CONTRACT AMOUNT

In consideration of the FIRE DEPARTMENT furnishing fire protection and emergency services set forth herein, TOWN shall pay to the FIRE DEPARTMENT Two Hundred Eighty One Thousand Eight Hundred Eighty One Dollars (\$281,881.00) in one sum, to be charged upon said FPD2 and be assessed and levied upon the taxable property in said FPD2 and collected with the taxes for the TOWN, and the Supervisor shall pay said sum over to the FIRE DEPARTMENT on or before March 31 during each year under this Contract, or as otherwise provided by subsequent Contract. Nothing herein shall be deemed to prohibit the TOWN from amending this Contract to provide for the payment of such sum in installments.

2.2 LOSAP AMOUNT

A portion of the consideration for this Contract recited in Paragraph 2.1 will be remitted by TOWN, as the Plan Sponsor of the Town of Duanesburg FPD2 Length of Service Award Program to pay the LOSAP funding amount of Fifty-Four Thousand Nine Hundred Two Dollars (\$54,902.00) for service credits earned during 2022 and the LOSAP service and administrative fees of Four Thousand One Hundred Dollars (\$4,100.00) and shall pay such amounts to the LOSAP Program Administrator or other institution that maintains the LOSAP Trust Funds for the Plan. Funding for the LOSAP Amount shall be derived in the same manner and from the same sources as the funding of the Contract Amount in SECTION 2.1. The parties agree that the sum of Six Thousand Eighty Dollars (\$6,080.00), representing the year to date costs of the LOSAP audit, will be deducted from the amount to be paid by the TOWN to the FIRE DEPARTMENT pursuant to SECTION 2.1.

2.3 VFBL

A portion of the Contract Amount paid by TOWN to FIRE DEPARTMENT is specifically and solely intended to be used for the procurement of VFBL insurance coverage in satisfaction of TOWN'S statutory obligation to provide same for the members of the FIRE DEPARTMENT while on duty. Conforming with past practices, FIRE DEPARTMENT shall procure and purchase VFBL insurance on behalf of TOWN. Nothing contained herein shall be deemed to limit or affect in any way the responsibility or liability of the TOWN to provide for VFBL insurance pursuant to VFBL §30 for injuries or for the death of any firefighter of the FIRE DEPARTMENT while engaged in the performance of duties as defined by VFBL §5, or any other pertinent statute of the State of New York. TOWN is deemed to be the political subdivision liable for the payment of such benefits and regularly served by such firefighters for purposes of VFBL §19.

2.4 CANCER COVERAGE

Unless TOWN decides to procure the requisite coverage on its own behalf, TOWN will provide as part of the Contract Amount under SECTION 2.1, the annual cost of enhanced cancer insurance as required by General Municipal Law § 205-cc and FIRE DEPARTMENT will procure, provide, and maintain such coverage for all qualified firefighters.

2.5 AHJ'S RESPONSIBILITY

Nothing herein shall be deemed to limit or affect in any way the responsibility or liability of the TOWN for injury sustained by any firefighter or for the death of any firefighter while engaged upon the performance of his or her duties, and otherwise, as provided by General Municipal Law Article 10 or any other statutes of the State of New York and members of the FIRE DEPARTMENT while engaged in the performance of their duties answering, attending upon or returning from any call provided for by this Contract, shall have the same rights, privileges and immunities as volunteer firefighters as provided for by law.

SECTION 3. GENERAL PROVISIONS

3.1 AUTHORITY HAVING JURISDICTION

FIRE DEPARTMENT acknowledges the TOWN'S role as the authority having jurisdiction ("AHJ") over the FIRE DEPARTMENT and the authority having by law, the control over the prevention and extinguishment of fires in the FPD2 pursuant to Not-for-Profit Corporation Law §1402(e).

3.2 TERM AND RENEWAL

This Contract shall continue through December 31, 2023. This Contract may be renewed up to four times effective through and including December 31, 2027. This Contract shall automatically renew for a one-year term under the same terms and conditions unless one of the contracting parties notifies the other in writing on or before **August 20th** of a given year that it seeks to modify or terminate the contract on of **December 31st** of that year.

3.3 MUTUAL AID

Nothing herein is intended to limit the FIRE DEPARTMENT'S ability to respond pursuant to approved mutual aid agreements with other jurisdictions.

3.4 TERMINATION

3.4.1 This Contract may be terminated by the FIRE DEPARTMENT upon 30 days written notice if TOWN fails to make payment as provided for under SECTION 2.1.

3.4.2 TOWN may terminate this Contract upon 30 days written notice if the FIRE DEPARTMENT fails to perform any of its obligations as set forth in SECTION 1 of this Contract. TOWN has the right to immediately terminate the Contract if the FIRE DEPARTMENT is unwilling or unable to respond to calls for assistance in FPD2 to the extent that TOWN determines that a public emergency exists or is about to be created as a result of the FIRE DEPARTMENT'S unwillingness or inability to provide the fire protection and emergency services set forth in this Contract. Upon termination, the prorated monthly balance of the Contract Amount set forth in SECTION 2.1 shall be returned to TOWN.

3.5 VENUE

This Contract is governed by the laws of the State of New York. To the extent permitted by law, the parties designate Supreme Court in and for Schenectady County as the proper venue for any litigation.

3.6 ASSIGNABILITY

Pursuant to General Municipal Law §109 this Contract may not be assigned except upon the express written consent of the Town Board of the TOWN.

3.7 SEVERABILITY

If any portion of this Contract is deemed unenforceable by a court of competent jurisdiction, the balance of the Contract shall remain viable and enforceable.

3.8 MODIFICATION

This Contract may only be modified in writing by the consent of all of the parties.

3.9 NON-WAIVER

The failure of the TOWN to compel strict compliance with one or more of the provisions of the Contract shall not be deemed to constitute a waiver of the FIRE DEPARTMENT'S obligations under said provisions or any other provision of this Contract.

3.10 NOTICE

All notices as may be required herein shall be submitted to the addresses listed below the names of the signatories. All notices sent to TOWN must be sent to the attention of the Town Clerk of the Town of Duanesburg. Notices sent to the FIRE DEPARTMENT must be sent to the attention of the President or Secretary of the FIRE DEPARTMENT, as follows:

To the TOWN:

Town Board of the Town of Duanesburg
Town of Duanesburg Town Hall
5853 Western Turnpike
Duanesburg, NY 12056

To the FIRE DEPARTMENT:

Mariaville Volunteer Fire Department, Inc.
9248 Mariaville Road
Pattersonville, NY 12137

IN WITNESS WHEREOF, the parties have duly executed and delivered this Contract the day and year first above written.

TOWN BOARD OF THE TOWN OF DUANESBURG

By: _____
William Wenzel, Supervisor

THE MARIAVILLE VOLUNTEER FIRE DEPARTMENT, INC.

By: _____, President

SCHEDULE 'A'

In addition to any other requirements for the production of documentation, FIRE DEPARTMENT shall provide TOWN with the following information prior to commencing the negotiation process for a contract and shall, on an annual basis provide the following:

- (1) file with the Town Board a statement (budget) containing an itemization of the estimated costs of the incorporated FIRE DEPARTMENT attributable to the provision of services under the contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs;
- (2) the FIRE DEPARTMENT'S most recent annual report of directors (or Trustees) pursuant to section five hundred nineteen of the not-for-profit corporation law;
- *(3) if, extant, the FIRE DEPARTMENT'S most recent verified certificate pursuant to subdivision (f) of section fourteen hundred two of the not-for-profit corporation law;
- (4) the FIRE DEPARTMENT'S most recent internal revenue service form 990; and
- (5) the FIRE DEPARTMENT'S most recent annual report pursuant to section thirty-a of the general municipal law.

- **Production of Item 3 waived for good cause shown**

SCHEDULE "B"

INSURANCE REQUIREMENTS

Commercial General Liability (CGL)*	1 million dollars per occurrence 2 million dollar aggregate
Medical Payments	5 thousand dollars
Personal & Advertising Injury	1 million dollars
Completed Operations	1 million dollars
Business Auto	1 million dollars (Combined Single Limit)
SUM Coverage	1 million dollars
Property Damage	Replacement cost or ACV as applicable
Excess/Umbrella Liability	5 million dollars
Worker's Compensation	Statutory limits
VFBL	Statutory limits
Enhanced Cancer Disability Benefits	Statutory limits

All policies, policy endorsements, and insurance certificates to name TOWN as "an additional insured on a primary, non-contributory basis".

Proof of insurance of Enhanced Cancer Disability Benefits coverage shall be provided annually by providing a copy of the form ESOB 210.5 filed with OFPC on January 1 of each year.

*If applicable, Professional Medical liability coverage to provided for EMS functions in the same amounts as CGL insurance if not otherwise included in CGL coverage.

All insurance required must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best Rating from A- to A+ or better.

Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal of coverage.

Waiver of Subrogation. All policies must include a Waiver of Subrogation in favor of the Town along with their respective officers, agents and employees for general liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.

**TOWN OF DUANESBURG
FIRE PROTECTION CONTRACT**

This Agreement (the "Agreement") made December 30, 2022 between the **TOWN OF DUANESBURG**, a municipal corporation organized under the laws of the State of New York and located in Schenectady County, New York, with a mailing address of 5853 Western Turnpike, Duanesburg, New York 12056 (the "Town"), acting on behalf of the Fire Protection District No. 3 of said Town (the "Fire Protection District"), and **VILLAGE OF ESPERANCE** a municipal corporation organized and existing under the laws of the State of New York, with its principal office at 104 Charleston Street, Esperance, New York 12066 (the "Village").

WITNESSETH:

WHEREAS, the Town has established the Fire Protection District more fully described in the Resolution establishing such district and duly adopted by the Town Board of the Town of Duanesburg (the "Town Board") on the 4th day of October 1951; and

WHEREAS, the Town, pursuant to Town Law section 184, must provide for the furnishing of fire protection within the Fire Protection District; and

WHEREAS, the Town wishes to contract with the Village for the furnishing of fire protection to the Fire Protection District for a period of time from January 1, 2023 through December 31, 2023; and

WHEREAS, at a duly held meeting of the Town Board, the Town duly authorized this Agreement with the Village for fire protection to the Fire Protection District upon the terms and provisions herein set forth; and

WHEREAS, this Agreement has been duly authorized by the governing board of the Village.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration exchanged between the parties, the Town does engage the Village to furnish fire protection to the Fire Protection District and the Village agrees to furnish such protection for the period of time from January 1, 2023 through December 31, 2023, in the following manner and on the terms and conditions set forth herein.

Article 1. Service(s) to be Provided.

A. The Village agrees to furnish suitable apparatus and appliances for the furnishing of fire protection in the Fire Protection District and when notified by alarm or telephone or in any other manner, of a fire within the Fire Protection District, the Village will respond and attend upon the fire without delay with suitable apparatus and appliances

and that the members of the Village shall proceed diligently and in every way reasonably suggested to extinguish the fire and to save life and property in connection therewith. The term "fire protection" includes inspections of buildings and properties in the Fire Protection District for the purposes specified in and as authorized by section 807-a and 807-b of the Education Law relating to fire inspection of school buildings, subdivision four of section 303 of the Multiple Residence Law relating to inspection of buildings and property, and section 189 of the Town Law relating to inspection of public and private buildings.

B. The Village further agrees to use its best efforts to furnish emergency service in case of accidents, calamities, or other emergencies in connection with which the services of firefighters would be required. Such service shall be furnished subject to such rules and regulations as shall be prescribed by the Village and approved by the Town Board. The Village agrees to carry liability and property damage insurance covering said emergency service in the same amounts, and under the same terms, as set forth in Article 4 below in connection with fire protection. The term "emergency" includes, unless a contrary intent is clearly expressed or indicated, the search for persons and the search for, and attempts to recover or the recovery of, bodies of persons even though it is possible or is known that all hope of life is gone.

C. The Village agrees that it is responsible for its operating expenses, including, but limited to:

- i. heat, lights, telephone and all other utilities in connection with the Village's facilities;
- ii. general maintenance, repairs and supplies for the Village's equipment, vehicles and housing for vehicles and meetings;
- iii. replacement of the Village's supplies and equipment;
- iv. all liability insurance on the Village's vehicles and facilities;
- v. all liability, contractual liability, malpractice, workers' compensation, contractual and/or errors and omissions insurance covering all members of the Village; and
- vi. all training and continuing education of the Village's membership, including such certification and recertification as may be required by law.

D. Upon the specific request of the Village, in the event of an emergency situation that is reasonably anticipated to have an adverse effect on the residents of the Town, the Village may request that the Town Highway Department snow plow, sand, de-ice and otherwise make safe the Village facilities. The Town Highway Department shall have sole discretion as to whether to perform such services. In the event such services are provided by the Town Highway Department, the Village shall, to the fullest extent

permitted by law, indemnify, defend and hold the Indemnified Parties (as defined in Article 8 hereof) harmless of and from any and all liability of any name, nature and kind imposed upon the Indemnified Parties as a result of the performance of such services, except for liability arising out of the negligence or willful misconduct of the Town. This indemnification obligation shall survive the expiration or termination of this Agreement. Nothing contained in this Article 1, Paragraph D, shall obligate the Town to perform any such services. The provision of such services in non-emergency situations is expressly prohibited.

Article 2. Term.

A. This Agreement shall take effect on January 1, 2023 (the “Effective Date”) and shall continue for the remainder of the year ending December 31, 2023, provided however, that this Agreement shall be deemed renewed on the same basis each year thereafter for a further calendar year (January 1 – December 31) without any further public hearing unless the Town or Village shall notify the other party in writing on or before the twentieth day of August that it elects to terminate this Agreement effective on December 31 in that year.

B. The term of this Agreement including renewals shall not exceed five (5) years.

C. Any requests for amendment to this Agreement during its initial term or any renewal portion thereof must be made in writing to the Town on or before the twentieth day of August of any year that this Agreement is in force.

Article 3. Consideration.

In consideration of the furnishing of said fire protection (and emergency services) as set forth herein, the Town shall pay to the Village a fire protection fee (the “Fire Protection Fee”) in the amount of Ninety Thousand Nine Hundred Ninety-Nine Dollars (\$90,999.00). Such Fire Protection Fee is to be charged upon the Fire Protection District, to be assessed and levied upon the taxable property within the Fire Protection District and collected with the Town taxes, and the Town shall pay the Fire Protection Fee over to the Village on or before March 31st during each year under this Agreement.

Article 4. Insurance.

Commercial General Liability (CGL):

- i. Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products - completed operations aggregate. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed

under an insured contract. There shall be no endorsement or modification of the Commercial GL form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors, or for liability resulting from application of either Section 240 or Section 241 of NY State Labor Law.

- ii. The Town along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained the Town is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Village, or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

B. Automobile Liability:

- i. Business Automobile Liability with a combined single limit of not less than \$1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
- ii. The Town along with their respective officers, agents, and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

C. Umbrella/Excess Liability:

- i. Umbrella/Excess Liability with limits not less than \$5,000,000 per occurrence/aggregate.
- ii. Umbrella Liability must include as Additional Insured all entities that are Additional Insureds on the CGL and Automobile Liability policies.
- iii. Umbrella/Excess Liability shall apply on a primary and not contributory basis.

D. Workers Compensation and Employers Liability:

- i. Employers Liability Insurance with limits not less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for injury by disease.
- ii. Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is option under the Workers Compensation Act.

E. All insurance required must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best Rating from A- to A+ or better.

F. Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal of coverage.

G. Waiver of Subrogation. All policies must include a Waiver of Subrogation in favor of the Town along with their respective officers, agents and employees for general liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.

H. Evidence of Insurance. Prior to the commencement of the work, the Village shall furnish to the Town Certificate(s) of Insurance executed by a duly authorized representative of each insurer, setting out the compliance with the insurance requirements et forth above. Certificates of Insurance must indicate the amounts of any and all deductibles. A copy of the Additional Insured Endorsement(s) must be provided to the Town.

Article 5. Reports.

A. The Village shall submit to the Town a written report of its fire protection (and emergency services) calls for each calendar year in such detail as the Town requests.

B. The Village shall file with the Duanesburg Town Clerk, on or before the 15th of January, April, July and October of each calendar year, a list of all Village's members, directors and officers, as of the last day of the previous calendar quarter.

C. The Village agrees to file with the Duanesburg Town Clerk, within fifteen (15) days after receipt of the same, its audited annual financial statement.

Article 6. The Town's Right to Stop Work or Terminate the Agreement.

If the Village fails or refuses to comply with all applicable laws or ordinances, or otherwise is in violation of any of the provisions of this Agreement, the Town shall, upon

ten (10) days' notice, specifying with particularity the basis therefore, have the right to terminate this Agreement. Said notice shall include a demand for a refund of a portion of the Fire Protection Fee, consisting of amounts allocable to the period of time subsequent to the effective date of the termination notice. Said amount shall be determined prorating the Fire Protection Fee on a per diem basis from the effective date of the termination notice to December 31 of the applicable calendar year, which prorated amount shall be refunded to the Town within thirty (30) days of the Town's request therefor. In the event the Village fails or refuses to refund said prorated amount, as provided for herein, the unpaid balance shall accrue interest at the rate of 9% per annum, and the Village shall be responsible for all of the Town's costs of collection of said amount, including reasonable attorneys' fees, whether or not an action is commenced.

Article 7. Independent Contractor.

It is hereby mutually covenanted and agreed that the Village shall be an independent contractor.

Article 8. Indemnity and Hold Harmless Agreement.

A. The Village hereby agrees to indemnify, defend and hold the Town, and its elected officials, officers, agents, and employees (collectively, the "Indemnified Parties") harmless of and from any and all liability of every name, nature and kind imposed upon the Indemnified Parties arising from the negligence or willful misconduct of the Village. The indemnification obligation hereunder shall include all reasonable attorneys' fees, costs and expenses, whether or not an action is commenced against an Indemnified Party, and shall survive the expiration or earlier termination of this Agreement

B. Nothing herein contained shall be deemed to limit or affect in any way the responsibility or liability of the Town for injury sustained by any fire fighter or for the death of any fire fighter while engaged upon the performance of his or her duties, and otherwise, as provided by section 205 of the General Municipal Law or any other statute of the State of New York and members of the Village while engaged in the performance of their duties answering, attending upon or returning from any call provided for by this Agreement, shall have the same rights, privileges and immunities as volunteer fire fighters as provided for by law.

Article 9. No Assignment.

In accordance with the provisions of Section 109 of the General Municipal Law, the Village is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

Article 10. Authority on Behalf of the Town.

The Town Supervisor has executed this Agreement pursuant to resolutions adopted by the Town Board at meetings thereof held on December 30, 2022. William Wenzel, Town Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into this Agreement on behalf of the Town. This instrument shall be executed in duplicate. At least one (1) copy shall be permanently filed, after execution, in the Office of the Duanesburg Town Clerk.

Article 11. No Waiver.

The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other, covenant, agreement, term or condition. By notice duly given, any party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement, or any duty, obligation or covenant of any other party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other then existing, or subsequent, breach.

Article 12. Amendment or Termination.

A. By mutual consent of both parties, and after a public hearing held pursuant to notice, this Agreement may be amended, terminated, or terminated and a new contract entered into in lieu hereof, if the Town, after the public hearing, determines by resolution that it is in the public interest to do so.

B. In all of the above cases, the notice of public hearing must state in general terms the reason why the existing Agreement is to be amended or terminated, and if a new contract is to be entered into, the notice must also describe the new contract in general terms.

Article 13. Severability.

Any provisions of applicable law, which supersede or invalidate any provision of this Agreement shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be enforced as if such superseded or invalid provision(s) were deleted.

Article 14. Notice.

A. All notices, offers and communications required or permitted by this Agreement shall be made in writing and shall be deemed given when personally delivered to a Party or mailed, addressed as follows:

To the Town:

Town Board of the Town of Duanesburg
Town of Duanesburg Town Hall
5853 Western Turnpike
Duanesburg, New York 12056

With a Copy to:

Terresa M. Balmer, Esq.
Whiteman Osterman & Hanna LLP
1 Commerce Plaza #19
Albany, New York 12260

To the Village:

Village of Esperance
PO Box 16
Esperance, New York 12066

With a Copy to:

None Designated

B. By notice given pursuant to this paragraph, either Party may designate any further or different address to which subsequent notices, offers or other communications to it shall be sent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement the day and year here mentioned.

TOWN OF DUANESBURG

By: William Wenzel
Its: Supervisor

VILLAGE OF ESPERANCE

By:
Its:

TOWN OF DUANESBURG
FIRE PROTECTION CONTRACT

This Agreement (the "Agreement") made December 30, 2022 between the **TOWN OF DUANESBURG**, a municipal corporation organized under the laws of the State of New York and located in Schenectady County, New York, with a mailing address of 5853 Western Turnpike, Duanesburg, New York 12056 (the "Town"), acting on behalf of the Fire Protection District No. 3 of said Town (the "Fire Protection District"), and **VILLAGE OF DELANSON**, a municipal corporation organized and existing under the laws of the State of New York, with its principal office at 1797 Main Street, Delanson, New York 12053 (the "Village").

WITNESSETH:

WHEREAS, the Town has established the Fire Protection District more fully described in the Resolution establishing such district and duly adopted by the Town Board of the Town of Duanesburg (the "Town Board") on the 4th day of October 1951; and

WHEREAS, the Town, pursuant to Town Law section 184, must provide for the furnishing of fire protection within the Fire Protection District; and

WHEREAS, the Town wishes to contract with the Village for the furnishing of fire protection to the Fire Protection District for a period of time from January 1, 2023 through December 31, 2023; and

WHEREAS, at a meeting of the Town Board held on December 8, 2022, the Town duly authorized this Agreement with the Village for fire protection to the Fire Protection District upon the terms and provisions herein set forth; and

WHEREAS, this Agreement has been duly authorized by the governing board of the Village.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration exchanged between the parties, the Town does engage the Village to furnish fire protection to the Fire Protection District and the Village agrees to furnish such protection for the period of time from January 1, 2023 through December 31, 2023, in the following manner and on the terms and conditions set forth herein.

Article 1. Service(s) to be Provided.

A. The Village agrees to furnish suitable apparatus and appliances for the furnishing of fire protection in such Fire Protection District and when notified by alarm or telephone or in any other manner, of a fire within said Fire Protection District, the Village

will respond and attend upon the fire without delay with suitable apparatus and appliances and that the members of the Village shall proceed diligently and in every way reasonably suggested to extinguish the fire and to save life and property in connection therewith. The term "fire protection" includes inspections of buildings and properties in the Fire Protection District for the purposes specified in and as authorized by section 807-a and 807-b of the Education Law relating to fire inspection of school buildings, subdivision four of section 303 of the Multiple Residence Law relating to inspection of buildings and property, and section 189 of the Town Law relating to inspection of public and private buildings.

B. The Village further agrees to use its best efforts to furnish emergency service in case of accidents, calamities, or other emergencies in connection with which the services of firefighters would be required. Such service shall be furnished subject to such rules and regulations as shall be prescribed by the Village and approved by the Town Board. The Village agrees to carry liability and property damage insurance covering said emergency service in the same amounts, and under the same terms, as set forth in Article 4 below in connection with fire protection. The term "emergency" includes, unless a contrary intent is clearly expressed or indicated, the search for persons and the search for, and attempts to recover or the recovery of, bodies of persons even though it is possible or is known that all hope of life is gone.

C. The Village agrees that it is responsible for its operating expenses, including, but limited to:

- i. heat, lights, telephone and all other utilities in connection with the Village's facilities;
- ii. general maintenance, repairs and supplies for the Village's equipment, vehicles and housing for vehicles and meetings;
- iii. replacement of the Village's supplies and equipment;
- iv. all liability insurance on the Village's vehicles and facilities;
- v. all liability, contractual liability, malpractice, workers' compensation, contractual and/or errors and omissions insurance covering all members of the Village; and
- vi. all training and continuing education of the Village's membership, including such certification and recertification as may be required by law.

D. Upon the specific request of the Village, in the event of an emergency situation that is reasonably anticipated to have an adverse effect on the residents of the Town, the Village may request that the Town Highway Department snow plow, sand, de-ice and otherwise make safe the Village facilities. The Town Highway Department shall have sole discretion as to whether to perform such services. In the event such services are

provided by the Town Highway Department, the Village shall, to the fullest extent permitted by law, indemnify, defend and hold the Indemnified Parties (as defined in Article 8 hereof) harmless of and from any and all liability of any name, nature and kind imposed upon the Indemnified Parties as a result of the performance of such services, except for liability arising out of the negligence or willful misconduct of the Town. This indemnification obligation shall survive the expiration or termination of this Agreement. Nothing contained in this Article 1, Paragraph D, shall obligate the Town to perform any such services. The provision of such services in non-emergency situations is expressly prohibited.

Article 2. Term.

A. This Agreement shall take effect on January 1, 2023 (the “Effective Date”) and shall continue for the remainder of the year ending December 31, 2023, provided however, that this Agreement shall be deemed renewed on the same basis each year thereafter for a further calendar year (January 1 – December 31) without any further public hearing unless the Town or Village shall notify the other party in writing on or before the twentieth day of August that it elects to terminate this Agreement effective on December 31 in that year.

B. The term of this Agreement including renewals shall not exceed five (5) years.

C. Any requests for amendment to this Agreement during its initial term or any renewal portion thereof must be made in writing to the Town on or before the twentieth day of August of any year that this Agreement is in force.

Article 3. Consideration.

In consideration of the furnishing of said fire protection (and emergency services) as set forth herein, the Town shall pay to the Village a fire protection fee (the “Fire Protection Fee”) in the amount of Eighty-Two Thousand Forty Four Dollars (**\$82,044.00**). Such Fire Protection Fee is to be charged upon the Fire Protection District, to be assessed and levied upon the taxable property within the Fire Protection District and collected with the Town taxes, and the Town shall pay the Fire Protection Fee to the Village on or before March 31st during each year under this Agreement.

Article 4. Insurance.

- A. Commercial General Liability (CGL):
- i. Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products - completed operations aggregate. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed

under an insured contract. There shall be no endorsement or modification of the Commercial GL form arising from pollution, explosion, collapse, underground property damage or work performed by subcontractors, or for liability resulting from application of either Section 240 or Section 241 of NY State Labor Law.

- ii. The Town along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained the Town is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the Village, or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

B. Automobile Liability:

- i. Business Automobile Liability with a combined single limit of not less than \$1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
- ii. The Town along with their respective officers, agents, and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

C. Umbrella/Excess Liability:

- i. Umbrella/Excess Liability with limits not less than \$5,000,000 per occurrence/aggregate.
- ii. Umbrella Liability must include as Additional Insured all entities that are Additional Insureds on the CGL and Automobile Liability policies.
- iii. Umbrella/Excess Liability shall apply on a primary and not contributory basis.

D. Workers Compensation and Employers Liability:

- i. Employers Liability Insurance with limits not less than \$1,000,000 each accident for bodily injury by an accident and \$1,000,000 each employee for injury by disease.
- ii. Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is option under the Workers Compensation Act.

E. All insurance required must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best Rating from A- to A+ or better.

F. Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal of coverage.

G. Waiver of Subrogation. All policies must include a Waiver of Subrogation in favor of the Town along with their respective officers, agents and employees for general liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.

H. Evidence of Insurance. Prior to the commencement of the work, the Village shall furnish to the Town Certificate(s) of Insurance executed by a duly authorized representative of each insurer, setting out the compliance with the insurance requirements et forth above. Certificates of Insurance must indicate the amounts of any and all deductibles. A copy of the Additional Insured Endorsement(s) must be provided to the Town.

Article 5. Reports.

A. The Village shall submit to the Town a written report of its fire protection (and emergency services) calls for each calendar year in such detail as the Town requests.

B. The Village shall file with the Duanesburg Town Clerk, on or before the 15th of January, April, July and October of each calendar year, a list of all Village's members, directors and officers, as of the last day of the previous calendar quarter.

C. The Village agrees to file with the Duanesburg Town Clerk, within fifteen (15) days after receipt of the same, its audited annual financial statement.

Article 6. The Town's Right to Stop Work or Terminate the Agreement.

If the Village fails or refuses to comply with all applicable laws or ordinances, or otherwise is in violation of any of the provisions of this Agreement, the Town shall, upon ten (10) days' notice, specifying with particularity the basis therefore, have the right to terminate this Agreement. Said notice shall include a demand for a refund of a portion of the Fire Protection Fee, consisting of amounts allocable to the period of time subsequent to the effective date of the termination notice. Said amount shall be determined prorating the Fire Protection Fee on a per diem basis from the effective date of the termination notice to December 31 of the applicable calendar year, which prorated amount shall be refunded to the Town within thirty (30) days of the Town's request therefor. In the event the Village fails or refuses to refund said prorated amount, as provided for herein, the unpaid balance shall accrue interest at the rate of 9% per annum, and the Village shall be responsible for all of the Town's costs of collection of said amount, including reasonable attorneys' fees, whether or not an action is commenced.

Article 7. Independent Contractor.

It is hereby mutually covenanted and agreed that the Village shall be an independent contractor.

Article 8. Indemnity and Hold Harmless Agreement.

A. The Village hereby agrees to indemnify, defend and hold the Town, and its elected officials, officers, agents, and employees (collectively, the "Indemnified Parties") harmless of and from any and all liability of every name, nature and kind imposed upon the Indemnified Parties arising from the negligence or willful misconduct of the Village. The indemnification obligation hereunder shall include all reasonable attorneys' fees, costs and expenses, whether or not an action is commenced against an Indemnified Party and shall survive the expiration or earlier termination of this Agreement.

B. Nothing herein contained shall be deemed to limit or affect in any way the responsibility or liability of the Town for injury sustained by any fire fighter or for the death of any fire fighter while engaged upon the performance of his or her duties, and otherwise, as provided by section 205 of the General Municipal Law or any other statute of the State of New York and members of the Village while engaged in the performance of their duties answering, attending upon or returning from any call provided for by this Agreement, shall have the same rights, privileges and immunities as volunteer fire fighters as provided for by law.

Article 9. No Assignment.

In accordance with the provisions of Section 109 of the General Municipal Law, the Village is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or of its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

Article 10. Authority on Behalf of the Town.

The Town Supervisor has executed this Agreement pursuant to a resolution adopted by the Town Board at a meeting thereof held on _____ 2022. William Wenzel, Town Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into this Agreement on behalf of the Town. This instrument shall be executed in duplicate. At least one (1) copy shall be permanently filed, after execution, in the Office of the Duanesburg Town Clerk.

Article 11. No Waiver.

The failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other, covenant, agreement, term or condition. By notice duly given, any party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement, or any duty, obligation or covenant of any other party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other then existing, or subsequent, breach.

Article 12. Amendment or Termination.

A. By mutual consent of both parties, and after a public hearing held pursuant to notice, this Agreement may be amended, terminated, or terminated and a new contract entered into in lieu hereof, if the Town, after the public hearing, determines by resolution that it is in the public interest to do so.

B. In all of the above cases, the notice of public hearing must state in general terms the reason why the existing Agreement is to be amended or terminated, and if a new contract is to be entered into, the notice must also describe the new contract in general terms.

Article 13. Severability.

Any provisions of applicable law, which supersede or invalidate any provision of this Agreement shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be enforced as if such superseded or invalid provision(s) were deleted.

IN WITNESS WHEREOF, the parties have duly executed and delivered this agreement the day and year here mentioned.

DATE: _____

TOWN BOARD OF THE TOWN OF
DUANESBURG

Town Clerk

By:

William Wenzel, Supervisor

VILLAGE BOARD OF THE
VILLAGE OF DELANSON

DATE: _____

Village Clerk

By:

Mayor

**CONTRACT FOR FIRE PROTECTION AND EMERGENCY SERVICES
BETWEEN
THE TOWN OF DUANESBURG
AND
BURTONSVILLE VOLUNTEER FIRE DEPARTMENT, INC.**

This Contract made this 30th day of December 2022 pursuant to Town Law §184 between the Town of DUANESBURG (“TOWN”) a municipal corporation organized under the laws of the State of New York, acting on behalf of Fire Protection District No. 3 (“FPD3”) of the TOWN and BURTONSVILLE VOLUNTEER FIRE DEPARTMENT, INC. (hereinafter “FIRE DEPARTMENT”), a domestic, not-for-profit, special fire corporation organized and existing under the laws of the State of New York, with its principal place of business and operations in Montgomery County New York.

WITNESSETH:

WHEREAS, by Resolution of the Town Board duly adopted on October 4, 1951 the TOWN established FPD3 in a portion of the TOWN for the purposes of furnishing fire protection within FPD3, the precise boundaries of FPD3 are more fully described in the establishing Resolution; and

WHEREAS, the TOWN desires to contract with the FIRE DEPARTMENT for the furnishing of fire protection and emergency services to FPD3 for a definite period of time from **January 1, 2023 through December 31, 2023**; and

WHEREAS, as a condition precedent to entering into negotiations for this Contract, the FIRE DEPARTMENT shall file with the TOWN in a format acceptable to the Town Board a statement (budget) itemizing the estimated costs of the FIRE DEPARTMENT attributable to the provision of services under this contract pursuant to Town Law §184(1-a) including all of the information requested in SCHEDULE “A” annexed hereto, for the Town Board’s review and consideration in determining the amount of compensation that is reasonable, necessary, and appropriate for the FIRE DEPARTMENT to provide the contracted services under this Contract; and

WHEREAS, pursuant to Town Law §184(2) a public hearing was duly held at the Town Hall after publication of the requisite notices for such hearing, and such hearing having been called for the purpose of reviewing the terms of this Contract and entertaining public comment thereon; and

WHEREAS, following said public hearing and pursuant to Town Law §184(1) the TOWN, by lawfully enacted resolution of the Town Board, has duly authorized this contract with the FIRE DEPARTMENT for fire protection and emergency services to said FPD3 upon the terms and provisions set forth herein; and

WHEREAS, the making of this Contract has been duly authorized by the governing board of the FIRE DEPARTMENT and/or membership as may be required by the bylaws of the FIRE DEPARTMENT and the signatory hereto on behalf of the FIRE DEPARTMENT warrants that all of the prerequisites of the FIRE DEPARTMENT bylaws have been satisfied, all required resolutions of the FIRE DEPARTMENT have been lawfully enacted, and said signatory is authorized to bind the FIRE DEPARTMENT to this Contract.

NOW, THEREFORE, in exchange for the mutual promises and other good and valuable consideration as recited herein, the receipt of which is hereby acknowledged, the TOWN does contract with the FIRE DEPARTMENT to furnish fire protection and emergency services to FPD3 and the FIRE DEPARTMENT agrees to furnish such services commencing January 1, 2021, in the following manner:

SECTION 1. FIRE DEPARTMENT'S OBLIGATIONS

1.1 DUTIES

FIRE DEPARTMENT agrees to furnish suitable apparatus, equipment, appliances and a sufficient number of properly trained personnel for the furnishing of fire protection and the provisions of emergency services in FPD3 and will timely respond when notified of a fire or other emergent situation within FPD3.

1.1.1 "Fire Protection" and "Emergency Services", as used herein, shall be deemed to include among other things: fire suppression, fire prevention, fire prevention education, life safety education, building inspections in conjunction with the Town of Duanesburg Building Inspector and Code Enforcement Officer, emergency medical services, and response to calls for assistance, rescue, or aid of every manner consistent with the corporate purposes of the FIRE DEPARTMENT and its Organizational Statement pursuant to 29 CFR 1910.156(b)(1).

1.2 RESPONSE

Upon dispatch, the FIRE DEPARTMENT will respond to the fire or emergency without delay and with suitable resources and trained personnel. The members of the FIRE DEPARTMENT shall proceed diligently and in a reasonable manner to eradicate the hazard, mitigate the situation, and preserve life and property in connection therewith.

1.3 TRAINING

FIRE DEPARTMENT warrants to TOWN that all firefighters and emergency personnel are appropriately trained and equipped to the current minimum training levels for their respective duty requirements and as mandated by OSHA [29 USC § 655(a)] and the regulations and rules promulgated thereunder including, but not limited to, 29 CFR 1910 subparts (H), (I), and (L) as well as all applicable New York State statutes, rules and regulations including, but not limited to, Labor Law §27-a and 12 NYCRR 800.7.

1.4 STANDARD PROCEDURES

FIRE DEPARTMENT warrants to TOWN that it has in place standard operating procedures or similar written standard policies or protocols for critical operations and will provide TOWN with a copy such current standards upon the execution of this Contract and during the term of this Contract, will immediately provide TOWN any amendments or additions to such standards.

1.5 CORPORATE BYLAWS

FIRE DEPARTMENT warrants to TOWN that it has Bylaws or a Constitution and Bylaws (collectively referred to hereinafter as "Bylaws") governing the corporate operations of the FIRE DEPARTMENT and will provide TOWN with a copy of the current Bylaws upon the execution of this Contract and during the term of this Contract will immediately provide TOWN any amendments or additions to such Bylaws.

1.6 ROSTER

Upon execution of this Contract, or upon any renewal thereof, FIRE DEPARTMENT will provide TOWN with a complete current roster of its members and their respective offices and titles (ex. Firefighter, Chief, President, social, honorary, etc.) and FIRE DEPARTMENT shall inform TOWN of any additions or deletions to the membership roster as they may occur during the term of this Contract within 30 days of such change.

1.7 OFFICER QUALIFICATIONS

Upon execution of this Contract, or upon any renewal thereof, FIRE DEPARTMENT shall provide TOWN with a copy of its current qualifications for officer requirements for firemanic officers. If no such qualifications currently exist, FIRE DEPARTMENT shall immediately notify TOWN in writing that no such qualifications exist and shall within three months thereafter, develop qualifications for officer requirements and provide them to TOWN.

1.8 FUND RAISING

On a monthly basis and in no event less than 30 days before such event, FIRE DEPARTMENT shall notify TOWN of any planned or proposed fund raising activity to be conducted in the TOWN. Such notice shall be provided in writing to the Town Clerk. Such notice shall contain a general description of the method which will be used to raise funds and shall specify the time or times when and place or places where such fund raising activity will be conducted. The notice shall also provide the names and contact information of the members serving on the committee overseeing such activity.

1.9 NEW MEMBERS

On a monthly basis, FIRE DEPARTMENT shall submit the names of individuals elected to membership as active firefighters in the FIRE DEPARTMENT and any such individual's election to membership is subject to approval by the Town Board.

1.10 BACKGROUND CHECKS

FIRE DEPARTMENT warrants to TOWN that all firefighters elected to membership are appropriately screened as mandated by Executive Law § 837-o and that the FIRE DEPARTMENT has complied with all relevant provisions of Not-for-Profit Corporation Law §1402 concerning eligibility and attaining membership.

1.11 QUARTERLY REPORTS

On a quarterly basis, by the 15th day of January, April, July, and October of each year this Contract is in effect, the FIRE DEPARTMENT shall submit to TOWN a report relating to the preceding three months detailing:

- 1.11.1 the number of calls received (e.g., responses to alarms, fires, emergencies or calls for assistance of any sort),
- 1.11.2 the nature of the calls (fire, MVA, hazmat, etc.),
- 1.11.3 the total number of fire firefighters responding to the calls,
- 1.11.4 the average number of firefighters responding per call per quarter,
- 1.11.5 the number of time mutual aid was given to other agencies/locales,
- 1.11.6 the number of times mutual aid was received from other agencies/locales,
- 1.11.7 to and from what agencies mutual aid was given and received,
- 1.11.8 the date, time, and nature of any calls for which FIRE DEPARTMENT was dispatched but was unable to have a unit respond to within five minutes of dispatch,

- 1.11.9 the date, time, and nature of any calls for which FIRE DEPARTMENT was dispatched but was unable to be on scene within 14 minutes of dispatch,
- 1.11.10 the number of in-house drills or other training conducted and the total number of firefighters in attendance,
- 1.11.11 a list of planned or upcoming training, schools, or conferences to be attended by FIRE DEPARTMENT'S firefighters personnel DEPARTMENT in the forthcoming six months.
- 1.11.12 as to all matters set forth in section 1.11.11, a statement as to whether such training, etc. is to be conducted outside of the County of Schenectady or outside the State of New York.

(Note: Nothing required to be provided herein is intended or shall be deemed to require the disclosure of patient protected information under HIPAA).

1.12 ANNUAL AUDIT

TOWN may require FIRE DEPARTMENT to conduct an annual audit of its financial records performed by a certified public accountant and the report of said audit together with any management letters will be presented to the TOWN no later than June 1 of the year succeeding the year for which the audit is performed. The cost of such audit shall be a separately delineated and budgeted annual expense in the FIRE DEPARTMENT'S annual budget.

1.13 CAPITAL EXPENDITURES

FIRE DEPARTMENT will advise TOWN of any plans to purchase, lease, acquire, or dispose of fire apparatus or equipment (including light duty vehicles) with a cost or value in excess of Thirty-five Thousand dollars and of any improvements to or acquisition of real property with a cost or value in excess of Fifty Thousand dollars.

1.14 INSURANCE

FIRE DEPARTMENT agrees to procure and maintain throughout the duration of this Contract Volunteer Firefighters' Benefit Law ("VFBL") insurance, commercial general liability ("CGL") insurance, business automobile insurance, professional (medical) liability insurance (as may be required if emergency medical services are provided), director's and officer's liability insurance, and Workers' Compensation insurance (if applicable) in such minimum limits as set forth on Schedule 'B' annexed hereto. FIRE DEPARTMENT will procure all such insurance for its benefit and the benefit of TOWN and shall name TOWN as "an additional insured on a primary, non-contributory basis". Satisfactory proof of insurance including, but not limited to certificates of insurance in acceptable form shall be provided upon the execution of this Contract. Neither the failure by the TOWN to make demand for such proof of insurance nor the failure by FIRE DEPARTMENT to produce said certificates of insurance shall relieve FIRE DEPARTMENT from the obligation to provide and maintain the insurance coverage of the type and in the amounts so specified with the obligatory additional insured provisions.

1.15 INDEMNITY

To the fullest extent permitted by law, FIRE DEPARTMENT agrees to indemnify and hold harmless TOWN for any claim or suit for personal injury (including death), property damage, professional liability or employer or management liability arising out of the FIRE DEPARTMENT'S operations or the discharge of FIRE DEPARTMENT'S duties on behalf of TOWN in furtherance of this Contract.

SECTION 2. TOWN'S OBLIGATIONS

2.1 CONTRACT AMOUNT

In consideration of the FIRE DEPARTMENT furnishing fire protection and emergency services set forth herein, TOWN shall pay to the FIRE DEPARTMENT Sixty-Six Thousand Seven Hundred Forty Dollars (\$66,740.00) in one sum, to be charged upon said FPD3 and be assessed and levied upon the taxable property in said FPD3 and collected with the taxes for the TOWN, and the Supervisor shall pay said sum over to the FIRE DEPARTMENT on or before February 28 during each year under this Contract, or as otherwise provided by subsequent Contract. Nothing herein shall be deemed to prohibit the TOWN from amending this Contract to provide for the payment of such sum in installments.

2.2 VFBL

A portion of the Contract Amount paid by TOWN to FIRE DEPARTMENT is specifically and solely intended to be used for the procurement of VFBL insurance coverage in satisfaction of TOWN'S statutory obligation to provide same for the members of the FIRE DEPARTMENT while on duty in or on behalf of the TOWN. Conforming with past practices, FIRE DEPARTMENT or another political subdivision acting as the authority having jurisdiction for FIRE DEPARTMENT shall procure and purchase VFBL insurance for the benefit of TOWN. Nothing contained herein shall be deemed to limit or affect in any way the responsibility or liability of the TOWN to provide for VFBL insurance pursuant to VFBL §30 for injuries or for the death of any firefighter of the FIRE DEPARTMENT while engaged in the performance of duties as defined by VFBL §5, or any other pertinent statute of the State of New York. TOWN is deemed to be either the political subdivision liable for the payment of such benefits or the political subdivision regularly served by such firefighters for purposes of VFBL §19.

2.3 CANCER COVERAGE

FIRE DEPARTMENT will procure the requisite coverage of enhanced cancer insurance as required by General Municipal Law § 205-cc on its own behalf as part of the Contract Amount under SECTION 2.1.

2.4 AHJ'S RESPONSIBILITY

Nothing herein shall be deemed to limit or affect in any way the responsibility or liability of the TOWN for injury sustained by any firefighter or for the death of any firefighter while engaged upon the performance of his or her duties, and otherwise, as provided by General Municipal Law Article 10 or any other statutes of the State of New York and members of the FIRE DEPARTMENT while engaged in the performance of their duties answering, attending upon or returning from any call provided for by this Contract, shall have the same rights, privileges and immunities as volunteer firefighters as provided for by law.

SECTION 3. GENERAL PROVISIONS

3.1 AUTHORITY HAVING JURISDICTION

FIRE DEPARTMENT acknowledges the TOWN'S role as the authority having jurisdiction ("AHJ") over the FIRE DEPARTMENT and the authority having by law, the control over the prevention and extinguishment of fires in the FPD3 pursuant to Not-for-Profit Corporation Law §1402(e).

3.2 TERM AND RENEWAL

This Contract shall continue through December 31, 2023. This Contract may be renewed up to four times effective through and including December 31, 2027. This Contract shall automatically renew for a one-year term under the same terms and conditions unless one of the contracting parties notifies the other in writing on or before the twentieth day of August of a given year that it seeks to modify or terminate the contract on the thirty-first day of December of that year.

3.3 MUTUAL AID

Nothing herein is intended to limit the FIRE DEPARTMENT'S ability to respond pursuant to approved mutual aid agreements with other jurisdictions.

3.4 TERMINATION

3.4.1 This Contract may be terminated by the FIRE DEPARTMENT upon 30 days written notice if TOWN fails to make payment as provided for under SECTION 2.1.

3.4.2 TOWN may terminate this Contract upon 30 days written notice if the FIRE DEPARTMENT fails to perform any of its obligations as set forth in SECTION 1 of this Contract. TOWN has the right to immediately terminate the Contract if the FIRE DEPARTMENT is unwilling or unable to respond to calls for assistance in FPD3 to the extent that TOWN determines that a public emergency exists or is about to be created as a result of the FIRE DEPARTMENT'S unwillingness or inability to provide the fire protection and emergency services set forth in this Contract. Upon termination, the prorated monthly balance of the Contract Amount set forth in SECTION 2.1 shall be returned to TOWN.

3.5 VENUE

This Contract is governed by the laws of the State of New York. To the extent permitted by law, the parties designate Supreme Court in and for Schenectady County as the proper venue for any litigation.

3.6 ASSIGNABILITY

Pursuant to General Municipal Law §109 this Contract may not be assigned except upon the express written consent of the Town Board of the TOWN.

3.7 SEVERABILITY

If any portion of this Contract is deemed unenforceable by a court of competent jurisdiction, the balance of the Contract shall remain viable and enforceable.

3.8 MODIFICATION

This Contract may only be modified in writing by the consent of all of the parties.

3.9 NON-WAIVER

The failure of the TOWN to compel strict compliance with one or more of the provisions of the Contract shall not be deemed to constitute a waiver of the FIRE DEPARTMENT'S obligations under said provisions or any other provision of this Contract.

3.10 NOTICE

All notices as may be required herein shall be submitted to the addresses listed below the names of the signatories. All notices sent to TOWN must be sent to the attention of the Town Clerk of the Town of Duanesburg. Notices sent to the FIRE DEPARTMENT must

be sent to the attention of the President or Secretary of the FIRE DEPARTMENT, as follows:

To the TOWN:
Town Board of the Town of Duanesburg
Town of Duanesburg Town Hall
5853 Western Turnpike
Duanesburg, NY 12056

With a copy to:
Terresa M. Bakner, Esq.
Whiteman Osterman & Hanna, LLP
1 Commerce Plaza, #19
Albany, NY 12260

To the FIRE DEPARTMENT:
Burtonsville Volunteer Fire Department, Inc.
2053 Burtonsville Road
Esperance, NY 12066

IN WITNESS WHEREOF, the parties have duly executed and delivered this Contract the day and year first above written.

TOWN BOARD OF THE TOWN OF DUANESBURG

By: _____
William Wenzel, Supervisor

BURTONSVILLE VOLUNTEER FIRE DEPARTMENT, INC.

By: _____
, President

SCHEDULE 'A'

In addition to any other requirements for the production of documentation, FIRE DEPARTMENT shall provide TOWN with the following information prior to commencing the negotiation process for a contract and shall, on an annual basis provide the following:

- (1) file with the Town Board a statement (budget) containing an itemization of the estimated costs of the incorporated FIRE DEPARTMENT attributable to the provision of services under the contract. The estimated costs attributable to the provision of services under the prospective contract itemized in the statement shall include, at a minimum, those, if any, for: supplies; materials; operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs;
- (2) the FIRE DEPARTMENT'S most recent annual report of directors pursuant to section five hundred nineteen of the not-for-profit corporation law;
- (3) if, extant, the FIRE DEPARTMENT'S most recent verified certificate pursuant to subdivision (f) of section fourteen hundred two of the not-for-profit corporation law;
- (4) the FIRE DEPARTMENT'S most recent internal revenue service form 990; and
- (5) the FIRE DEPARTMENT'S most recent annual report pursuant to section thirty-a of the general municipal law.

SCHEDULE "B"

INSURANCE REQUIREMENTS

Commercial General Liability (CGL)*	1 million dollars per occurrence 2 million dollar aggregate
Medical Payments	5 thousand dollars
Personal & Advertising Injury	1 million dollars
Completed Operations	1 million dollars
Business Auto	1 million dollars (Combined Single Limit)
SUM Coverage	1 million dollars
Property Damage	Replacement cost or ACV as applicable
Excess/Umbrella Liability	5 million dollars
Worker's Compensation	Statutory limits
VFBL	Statutory limits
Enhanced Cancer Disability Benefits	Statutory limits

All policies, policy endorsements, and insurance certificates to name TOWN as "an additional insured on a primary, non-contributory basis".

Proof of insurance of Enhanced Cancer Disability Benefits coverage shall be provided annually by providing a copy of the form ESOB 210.5 filed with OFPC on January 1 of each year.

*If applicable, Professional Medical liability coverage to be provided for EMS functions in the same amounts as CGL insurance if not otherwise included in CGL coverage.

All insurance required must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best Rating from A- to A+ or better.

Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal of coverage.

Waiver of Subrogation. All policies must include a Waiver of Subrogation in favor of the Town along with their respective officers, agents and employees for general liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION __ - 22

December 30, 2022

WHEREAS, the Town wishes to enter into Agreements (the “Agreements”) with OMNIS Computer & Reprographics (“OMNIS”) for the provision of hardware, software licensing, support, backup, anti-virus protection and analytics, CivicsPlus, LLC (“CivicPlus”) for website services, H2H a Bowman Company (“H2H”) for landfill monitoring, Duanesburg Volunteer Ambulance Corps (“DVAC”), Inc. for general ambulance services, the Village of Delanson (“Delanson”) for the Town of Duanesburg to provide road maintenance and building inspection services, and the Town of Princetown (“Princetown”) for the Town of Duanesburg to provide snow plowing services; and

WHEREAS, the Town of Duanesburg Town Highway Superintendent has signed off on the Intermunicipal Agreements with the Village of Delanson and the Town of Princetown with respect to the roadway maintenance and snow plowing services; and

WHEREAS, the Town Board has carefully reviewed the Agreements, including the changes to the Agreements since they were distributed at the December 8, 2022 meeting of the Town Board; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board approves and authorizes the Town Supervisor to execute the Agreements attached hereto.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting on December 30, 2022.

William Wenzel, Supervisor

Town Clerk/ Deputy Town Clerk

Present:

Absent:

Council Members:

William Wenzel	Yea	Nay	Abstain
Dianne Grant	Yea	Nay	Abstain
Andrew Lucks	Yea	Nay	Abstain
Francis Potter	Yea	Nay	Abstain
Michael Santulli	Yea	Nay	Abstain

WOH REVISIONS
09.23.2022



MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") is made this 1st day of January 2023 ("Effective Date") by and between Omnis Computers & Supplies, Inc. @ 2165 Technology Dr, Schenectady, NY 12308 and Town of Duanesburg @ 5853 Western Turnpike Duanesburg, NY 12056 ("Client").

1. SCOPE OF AGREEMENT. This Agreement serves as a master agreement and applies to Client's purchases from OMNIS COMPUTERS, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product"). Client hereby engages and retains OMNIS COMPUTERS to render Services as more particularly set forth in the "Statement of Work" or "SOW" attached hereto and incorporated herein by reference or subsequent Statements of Work

1.1 Statement of Work (SOW)

- Green Service Contract
- 24/7 Monitoring & Proactive Support
- Unlimited Help-Desk Support
- Unlimited Remote Remediation
- Automated Maintenance
- End-User Portal Access
- Remote Weekend & After Hour Support \$150/Hour
- Onsite Support Weekend & After Hour \$150 per Hour
- Onsite Service: \$100/Hour
- New Project Work: \$100/Hour
- Remote Weekend After Hour EMERGENCY Support
- Onsite Weekend After Hour EMERGENCY Support: \$150/Hour
- Daily Server Backup Monitoring
- Monthly Executive Reports
- Unlimited Technology Consulting
- BitDefender Anti-Virus
- Technology Vendor Management
- Managed Backup 2 TB included (additional tiered cloud storage available at \$65 per TB over 2TB)
- Discounted hardware
- Virtual CIO (yearly or as needed)

1 Server @ \$125 per month

***MICROSOFT 365 ARE BILLED SEPERATLEY (will be on invoice) ***

21 Bitdefender AV- \$2.50 per PC @ \$52.50 per month

User count changes and prices are set by Microsoft

19 workstations @ \$25 each per month

Costs are not included under Green service contract.

Managed backup @ \$125 per month

Total per month \$777.50

Phone: 518.385.7500
Fax: 518.385.7501
e-mail: info@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



Client acknowledges that services do not include the following:

- Emergency support that is not provided remotely or is requested after normal business hours. Emergency support that requires an onsite visit is billable at the after-hours billable rate of 1.5 times the normal hourly rate unless otherwise included in the contract. Additionally, any non-emergency request that is not scheduled in advance but is required outside of normal hours will be classified as a billable charge at 1.5 times the normal billable rate unless otherwise included in the contract.
- Major projects including new server installations, new application installations, major software upgrades.
- The cost of parts not covered by manufacturer/vendor warranty. The cost of parts, shipping, licensing, software renewals or upgrade fees (that are not explicitly included in contract). Third party vendors, manufacturer support for incident fees, or the cost of bringing the clients environment into compliance with any regulatory standards (unless specifically indicated in contract).
- Service and repair of any unauthorized alterations or modifications of hardware, or software installations made by anyone other than Omnis employees.

Client acknowledges

- Emergencies constitute major server outages, full network outages or other major disruptions that prevent the normal functionality of a multiple members of client company. To facilitate this, we request that an after-hours emergency contact is put in place to approve or deny any requested work.
- Clients network/computer infrastructure must meet the following minimum standards
 - All computers have Windows 10 Pro or higher.
 - Server(s) have an operating system that is not considered end of life.
 - All server hardware is under warranty and actively receiving updates from the manufacturer.
 - Firewall(s) that has an active security subscription and is not end of life.
 - Switch(s) and Access Points that are not classified as end of life.
 - Line of business applications are on a currently supported version by the vendor and/or active maintenance contract or subscription

After multiple denied recommendations to keep the Client environment in alignment with best practices Omnis Computers reserves the right to bill for ANY work pertaining to the out of alignment item(s) at the normally billable rate.

- This service is a prepaid service due on the first of each month.

Phone: (518) 437-1319
Fax: (518) 437-1318
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



2. GENERAL REQUIREMENTS.

- 2.1 **System.** For the purposes of this Agreement, "System" means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the System, or installing software on the System, unless we expressly authorize such activity.
- 2.2 **Maintenance: Updates.** If patches and other software-related maintenance updates ("Updates") are provided under a SOW, we will install the Updates only if we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. We will not be responsible for any downtime or losses arising from or related to the Installation or use of any Update, provided that the Update was installed in accordance with the manufacturer's or applicable vendor's instructions.
- 2.3 **Third-Party Vendors and Service Providers.** We do not own certain Third-Party Products and the use thereof is subject to certain rights and limitations of which we need to inform you. Your right to use the Third-Party Products is subject to your Agreement with us, and to your understanding of, compliance with and consent to the terms and conditions of the Third-Party agreements, which we do not have authority to vary, alter or amend.

Therefore, OMNIS COMPUTERS may utilize a Third-Party Service Provider in its discretion to provide the Services in accordance with the Agreement. OMNIS COMPUTERS shall not, however, subcontract any Services to a third party without the prior written consent of Client. If Client so consents, OMNIS COMPUTERS will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Service Provider to Client, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products or Services, and OMNIS COMPUTERS will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any Third-Party Provider. The Third-Party Provider may require the OMNIS COMPUTERS to sign a contract with the Third-Party Provider for its services ("Third-Party Contract") and the terms of the Third-Party Contract may require certain conditions and requirements upon Client. The terms and conditions of any such Third-Party Contract(s) will be provided to the Client or attached to the Scope of Work which identifies the Third-Party Service Provider and the associated terms and conditions. Client hereby agrees to review all Third-Party Contracts and consents to the terms and condition of those Third-Party Contracts which Client has consented OMNIS COMPUTERS contract upon its behalf.

- 2.4 **Third Party Support.** If, in OMNIS COMPUTERS's discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed \$100, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
- 2.5 **Advice: Instructions.** From time to time, we may provide you with specific advice and directions related to our provision of the Services or the maintenance or administration of the System. (For example, our advice or directions may include increasing the System's server or hard drive capacity or replacing obsolete equipment.) You agree to promptly follow and implement any directions we provide to you related to the Services which, depending on the situation, may require you to make additional purchases or investments in the System or the environment in which the System is maintained, at your sole cost. We will not be responsible for any problems or issues (such as System downtime or security-related issues) caused by your failure to promptly follow our advice or directions. If your failure to follow or implement our advice renders part or all of the Services economically or technically unreasonable to provide in our discretion, then we may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow OMNIS COMPUTERS's advice or directions, or your

Phone: (518) 752-7529
Fax: (518) 752-1119
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305

OMNIS Computers & Reprographics

unauthorized modification of the System, as well as any services required to bring the System up to or maintain the Minimum Requirements, are not covered under any SOW and will be out-of-scope.

3. **TERM AND TERMINATION.** This Agreement will begin on the Effective Date and will continue until each Order expires or is terminated. OMNIS COMPUTERS may: (a) terminate a specific Order if Client fails to pay any applicable fees due for that Order within 30 days after receipt of written notice from OMNIS COMPUTERS of non-payment; and/or (b) terminate this Agreement or an Order if Client commits any other material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from OMNIS COMPUTERS. If an Order for Services is terminated, Client will promptly pay OMNIS COMPUTERS for Services rendered, and expenses incurred through the termination date.

Client may (a) terminate this Agreement or an Order if OMNIS COMPUTERS commits any other material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from Client; and/or (b) terminate for any reason with ninety (90) days written notice to OMNIS COMPUTERS.

4. **PAYMENT.** Client will pay OMNIS COMPUTERS all fees due upon receipt of an invoice specifying the amounts due ("**Fees**"). All Fees payable under this Agreement are exclusive of sales, use, excise, and any other applicable transaction taxes, which Client will pay (excluding taxes based upon the net income of OMNIS COMPUTERS). If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) (or any other interest rate in accordance with the state's law) per month from the date due until paid in full. Client shall pay all expenses, including actual attorneys' fees, incurred by OMNIS COMPUTERS or its representatives in enforcing its rights under this Agreement, provided that OMNIS COMPUTERS is successful on the merits. Client's obligation to pay undisputed amounts due for Services and OMNIS COMPUTERS's right to all such amounts are absolute and unconditional. Client is not entitled to setoff of such amounts. All Fees will be detailed in an Order. Unless otherwise stated in a SOW, Client agrees to pay or reimburse OMNIS COMPUTERS for all actual, necessary, and reasonable expenses incurred by OMNIS COMPUTERS in performance of such SOW, which are capable of verification by receipt. OMNIS COMPUTERS will submit invoices to Client for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Statement of Work.

5. **CONFIDENTIALITY AND NON-DISCLOSURE.** Both Parties to this Agreement recognize that, from time to time, they may come into contact with Information that the other Party considers confidential. Confidential Information is defined for this Agreement as all information (whether written or oral) that comes into a Party's possession under or in connection with this Agreement that is reasonably considered by the disclosing Party to be confidential and is clearly identified as confidential. The Parties shall keep all Confidential Information in strict confidence.

The recipient will use a reasonable standard of care in protecting Confidential Information, which will not be less than the standard of care the recipient uses to protect its own confidential information; only use Confidential Information to perform its obligations and exercise its rights under this Agreement; not disclose Confidential Information to any third party; when requested by the disclosing Party, return or destroy the Confidential Information.

6. **PROVISION OF MATERIALS AND SERVICES TO OMNIS COMPUTERS.** Client agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe work spaces for purposes of OMNIS COMPUTERS or its contracted subcontractors, performing the services. Client will also provide OMNIS COMPUTERS or its contracted subcontractors, with access to all information, passwords and facilities requested by OMNIS COMPUTERS that is necessary for OMNIS COMPUTERS or its contracted subcontractors, to perform the services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Client understands that the OMNIS COMPUTERS or its contracted subcontractors, may be unable to perform their duties adequately.

7. **WORKING ENVIRONMENT.** Client shall provide a suitable working environment for any Equipment located at Client's facility. Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each piece of Equipment. Client shall bear the risk of loss of any Equipment located at Client's facility.

Phone: (518) 432-7829
Fax: (518) 432-1116
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



8. **RESPONSIBILITY FOR EQUIPMENT.** Client acknowledges that from time to time (a) OMNIS COMPUTERS may identify additional items that need to be purchased by Client, and (b) changes in Client's systems may be required in order for OMNIS COMPUTERS to meet Client's requirements. In connection therewith, Client agrees to work in good faith with OMNIS COMPUTERS to effectuate such purchases or changes. In the event that OMNIS COMPUTERS is required to purchase any assets, including computer hardware and/or software, in connection with OMNIS COMPUTERS providing the services, all such assets will remain the sole property of OMNIS COMPUTERS unless specifically stated otherwise in writing. Client will be responsible for the quality, completeness and workmanship of any item or service furnished by it and for ensuring that the materials provided to OMNIS COMPUTERS or its contracted subcontractors, do not infringe or violate the rights of any third party. Client will maintain adequate backup for all data and other items furnished to OMNIS COMPUTERS.

9. **CLIENT DATA OWNERSHIP AND RESPONSIBILITY.** Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any data, information or material proprietary submitted by Client to OMNIS COMPUTERS.

10. **INTELLECTUAL PROPERTY.** OMNIS COMPUTERS retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of this Agreement, as well as any software, materials, or methods created prior to or after conclusion of any work. Client acquires no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement.

10.1. Client may only use and disclose Product in accordance with the terms of this Agreement and applicable Order. OMNIS COMPUTERS reserves all rights in and to the Product not expressly granted in this Agreement. Client may not disassemble or reverse engineer any software Product or decompile or otherwise attempt to derive any software Product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation or provide a third party with the results of any functional evaluation, or benchmarking or performance tests on the Products, without OMNIS COMPUTERS's prior written approval. Except as expressly authorized in this Agreement or an Order, Client may not (a) distribute the Product to any third party (whether by rental, lease, sublicense or other transfer), or (b) operate the Product in an outsourcing or OMNIS COMPUTERS business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Product - applicable installation instructions or release notes will contain the relevant details.

10.2. **License Agreements.**

(a) **License.** Subject to the terms of this Agreement, OMNIS COMPUTERS grants Client a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other product provided as part of the Services solely for its own internal use. At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements ("Minimum Requirements"), you agree to do so as an ongoing requirement of us providing our Services to you.

(b) **Software Installation or Replication.** If OMNIS COMPUTERS is required to install or replicate Client software as part of the Services, Client will independently verify that all such software is properly licensed. Client's act of providing any software to OMNIS COMPUTERS will be deemed Client's affirmative acknowledgement to OMNIS COMPUTERS that Client has a valid license that permits OMNIS COMPUTERS to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor Client's equipment for the installation of unlicensed software unless OMNIS COMPUTERS in a written statement of work ("SOW") expressly agrees to conduct such monitoring.

(c) **Pre-Existing License Agreements.** Any software product provided to Client by OMNIS COMPUTERS as a reseller for a third party, which is licensed to Client under a separate software license agreement with such third party, will continue to be governed by the third-party license agreement.

Phone: (518) 237-7139
Fax: (518) 237-7139
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



(d) **EULA.** Portions of the Services may require you to accept the terms of one or more third party end user license agreements ("EULAs"). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant OMNIS COMPUTERS permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs. If, while providing the Services, we are required to comply with a third-party EULA and the third party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third party EULA.

10.3. Third-Party Products. Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through OMNIS COMPUTERS ("Third Party Products") are nonrefundable once the applicable SOW is placed in our queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third-Party Products are provided "as is" and without any warranty whatsoever as between OMNIS COMPUTERS and you (including but not limited to implied warranties).

11. WARRANTY. OMNIS COMPUTERS warrants that it or its contracted subcontractors, will perform the services substantially in accordance with the specifications set forth whether under this agreement, a SOW, other work order or otherwise in connection with any of them. For any breach of the foregoing warranty, OMNIS COMPUTERS or its contracted subcontractors, will exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the ten (10) business day period immediately preceding the date of Client's written notice to OMNIS COMPUTERS specifying in reasonable detail such non-conformance. If OMNIS COMPUTERS concludes that conformance is impracticable, then OMNIS COMPUTERS will refund all fees paid by Client to OMNIS COMPUTERS hereunder, if any, allocable to such nonconforming Services.

11.1. Notwithstanding any provision to the contrary in this Agreement, any warranty offered and provided directly by OMNIS COMPUTERS product shall be deemed null and void if the applicable product is (i) altered, modified or repaired by persons other than OMNIS COMPUTERS, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by OMNIS COMPUTERS (ii) misused, abused, or not operated in accordance with the specifications of OMNIS COMPUTERS or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than OMNIS COMPUTERS or persons approved or designated by OMNIS COMPUTERS.

Notwithstanding the above, OMNIS COMPUTERS does not warrant its products or services beyond a reasonable standard or skill consistent with industry standards. OMNIS COMPUTERS does not guarantee or promise any cost savings, profits, or returns on investment.

12. SOFTWARE HARDWARE & SECURITY. Client understands and agrees that data loss or network failures may occur, whether or not foreseeable. In order to reduce the likelihood of a network failure the Client must maintain proper security for its computer and information system including software and hardware updates. Client will adhere to software and hardware updates and maintain specific security standards, policies, procedures set forth and recommended by OMNIS COMPUTERS.

13. CLIENT CYBER SECURITY. It is understood that the services provided under this MSA are limited to the Scope of Work as detailed in Paragraph 1, or any subsequent Scope of Work. Unless otherwise specified in the Scope of Work, it is not the intent, nor does the OMNIS COMPUTERS provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for the Client. As cyber threats are always evolving it is strongly recommended that the Client engage the services of a cyber protection third party vendor to monitor the cyber controls and cyber activities in the system. Upon request OMNIS COMPUTERS may provide to Client several companies that provide cyber protection. OMNIS COMPUTERS can

Phone: (518) 472-7877
Fax: (518) 472-1190
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305

OMNIS Computers & Reprographics

assist in evaluating Clients specific needs, but it is understood and agreed that OMNIS COMPUTERS does not offer nor provide cyber security under this Agreement.

14. TERRORISM. In no event, including the negligent act or omission on its part, shall OMNIS COMPUTERS, whether under this Agreement, an SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any act of terrorism, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom.

15. TELEMARKETING & UNSOLICITED EMAILS. In no event, including the negligent act or omission on its part, shall OMNIS COMPUTERS or its contracted subcontractors, whether under this Agreement, an SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if the Client's data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders", "spybots", "spyware", wiretapping, bugging, video cameras or identification tags.

16. EXTRAORDINARY EVENTS. In no event, including the negligent act or omission on its part, shall OMNIS COMPUTERS or its contracted subcontractors, whether under this Agreement, an SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any failure or malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God or other physical event.

17. RELEASE WITH LIMITATION OF LIABILITY. THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. YOU ACKNOWLEDGE AND AGREE THAT OMNIS COMPUTERS WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. CLIENT AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASOR PARTIES") AGREES TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, AGREES TO RELEASE THE OMNIS COMPUTERS AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY AMOUNT IN EXCESS OF THE LICENSE FEE OR FOR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. NO CIRCUMSTANCES SHALL OMNIS COMPUTERS'S AGGREGATE

Phone: (518) 472-7679
Fax: (518) 472-4197
e mail: info@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305

OMNIS COMPUTER'S professional liability insurance coverage limits in accordance with this Agreement.



professional liability
insurance coverage
in accordance with
this Agreement

LIABILITY ARISING FROM OR OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS. OMNIS COMPUTERS SHALL NOT BE LIABLE TO CLIENT FOR ANY DELAY IN DELIVERY OR PERFORMANCE, OR FAILURE TO DELIVER OR PERFORM AT OR WITHIN THE DEADLINES SET FORTH IN THIS AGREEMENT.

18. MUTUAL INDEMNIFICATION AND HOLD HARMLESS. EACH PARTY AGREES TO THE FULLEST EXTENT PERMITTED BY LAW SHALL AT ALL TIMES DEFEND, INDEMNIFY, PAY, SAVE AND HOLD THE OTHER PARTIES AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "MUTUALLY INDEMNIFIED PARTIES") HARMLESS FROM EACH AND ANY AND ALL LIABILITIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES), COSTS, EXPENSES, SUITS, CIVIL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, LOSSES, CLAIMS, ACTIONS, VIOLATIONS, FINES AND PENALTIES (INCLUDING WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEY'S FEES AND ANY OTHER REASONABLE COSTS OF LITIGATION) (HEREINAFTER COLLECTIVELY, THE "CLAIMS") THAT ANY OF THE MUTUALLY INDEMNIFIED PARTIES MAY SUFFER, SUSTAIN OR INCUR TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE MUTUALLY INDEMNIFIED PARTIES ARISING OUT OF THIS AGREEMENT.

19. RESPONSE: REPORTING.

19.1. Response. OMNIS COMPUTERS warrants and represents that we will provide the Services, and respond to any notification received by us of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which we are required to suspend the Services to protect the security or integrity of your System or our equipment or network, or (iv) delays caused by a force majeure event.

19.2. Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by us but which will not occur between the hours of 9:00 AM and 5:00 PM EST (or EDT, as applicable), Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to its network. We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.

19.3. Client-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").

19.4. Vendor-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or "upstream" service or product vendors.

19.5. Remedies: Limitations. Except for the Onboarding Exception, if we fail to meet our service level commitment in a given calendar month and if, under such circumstances, our failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, we will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to us, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph and in Section 7(b) are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for our failure to meet any service level commitment during the term of this Agreement.

Phone: (518) 472-7200
Fax: (518) 472-1100
e-mail: sales@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



20. **SERVICE ASSUMPTION LIABILITY LIMITATION.** It is mutually agreed that OMNIS COMPUTERS will have no responsibility for any deficiencies in the current operating systems until the OMNIS COMPUTERS has had a reasonable opportunity to conduct a review the current system and to provide Client with their recommendations.

21. **PROVIDER INSURANCE.** OMNIS COMPUTERS agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, OMNIS COMPUTERS will maintain at its own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for owned, hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

22. **CLIENT INSURANCE**

RESERVED

22.1. **Commercial Property Insurance.** Client shall secure at its own cost and expense Property Insurance for the equipment that is part of the provisions of the service agreement. The policy shall include the following coverages:

- Replacement cost valuation on OMNIS COMPUTERS's equipment.
- Waiver of coinsurance for the insured property.
- Insured for "All Risk"/"Special Perils" with an extension of coverage for Flood and Earthquake.

22.2. **Cyber Insurance.** Client shall secure and maintain for the duration of the contract Cyber Liability Insurance to insure Client's cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine your specific coverage and policy limit requirements.

22.3. **Mutual Waiver of Subrogation.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW) AND EMPLOYERS PROFESSIONAL LIABILITY GENERAL LIABILITY. PROPERTY INSURANCE, COMMERCIAL UMBRELLA/EXCESS, CYBER OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD THE OMNIS COMPUTERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT THE CLIENTS INSURANCE POLICIES REFERENCED ABOVE PROVIDES FOR THE WAIVER OF SUBROGATION INCLUDED IN THE MASTER SERVICE AGREEMENT.

23. **DISCLAIMERS.** The express remedies set forth in this Agreement will constitute Client's exclusive remedies, and OMNIS COMPUTERS's sole obligation and liability, for any claim (a) that a Service or deliverable provided hereunder does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.

EXCEPT FOR THE WARRANTIES MADE BY OMNIS COMPUTERS IN SECTION 10, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CLIENT, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." OMNIS COMPUTERS DOES NOT MAKE ANY ADDITIONAL WARRANTIES, EXPRESSED, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

Phone: (518) 338-7579
Fax: (518) 338-7579
e-mail: info@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



OMNIS COMPUTERS DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CLIENT REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CLIENT, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

No statement by any OMNIS COMPUTERS employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way whatsoever.

24. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

25. AMENDMENT. This Agreement may not be amended except by a writing executed by an authorized individual of the OMNIS COMPUTERS.

26. RELATIONSHIP. The Parties are independent parties; and this Agreement does not make the Parties principal and agent, partners, employer and employee; nor does it create a joint venture. It is further understood that there is no relationship, including but not limited to a partnership, joint venture, sub-contractor or other commission-based relationship, between any party that referred OMNIS COMPUTERS or Client to the other party to this Agreement.

27. LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of New York.

28. WAIVER. Failure by either Party to insist upon strict performance of any provision herein shall not be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default by the other Party.

29. FORCE MAJEURE. Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.

30. DATA ACCESS/STORAGE. Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify our standard access or storage procedures.

31. ASSIGNMENT. Client may not assign its rights or obligations under this Agreement without OMNIS COMPUTERS's prior written consent which shall not be unreasonably withheld.

32. COUNTERPART AND ELECTRONIC SIGNATURES. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The Client's electronic signature of this Agreement shall have the same validity and effect as a signature affixed by the Client's hand.

33. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement by and between the Parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreement of the Parties, whether written or oral, with respect to such subject matter.

Phone: (518) 371-7229
fax: (518) 371-1181
e-mail: omnis@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305



Client- Town of Duaneburg

OMNIS COMPUTERS - Omnis Computers & Supplies, Inc.

By: _____

By: _____

Date: _____

Date: 9/22/22

Phone: (518) 572-7829
Fax: (518) 572-7119
e mail: info@omnis.com

141 ERIE BOULEVARD SCHENECTADY, NEW YORK 12305

License and Service Agreement

Date: December 30, 2022

Client: Town of Duanesburg, NY

Client Address: 5853 Western Turnpike, Duanesburg, NY 12056

Phone: (518) 895-8920

This License and Service Agreement ("Agreement") sets forth the agreed upon terms and conditions under which CivicPlus, LLC ("CivicPlus") will provide the Services, as outlined and defined in the attached Exhibit A — Statement of Work ("SOW").

Recitals

Whereas, CivicPlus is the current primary website service provider for Client;

Whereas, the Client is currently under contract with CivicPlus, as an assignee of all Virtual Towns and Schools (dba Virtual Town Hall Holdings, LLC) customer contracts, for the website hosting services as set forth in the original License & Service Agreement signed on May 26, 2017; and

Whereas, CivicPlus and Client wish to renew the License and Services terms of Agreement as set forth in Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

Term and Termination

1. This agreement shall be for a one-year period, starting at the Client's current annual renewal term (September 1, 2022), and shall automatically renew, year-to-year, unless terminated by either party.
2. Either party may terminate the Services by providing the other party with at least 60 days written notice prior to the renewal date.
3. Client may terminate this Agreement at any time if CivicPlus is found in default of any obligation defined within this Agreement which has not been cured within thirty days after receipt of written notice of such default.
4. Notwithstanding the above, in the event this Agreement and the Services are terminated, any outstanding invoices for Services performed shall become due in full and any outstanding fees for annual services shall be prorated from the beginning of the renewal term to the date of termination.

Intellectual Property & Ownership

5. This Agreement is not a sale of CivicCMS Content Management System (the "CMS") and its associated applications and modules or any other intellectual property of any software or other original works created by or licensed to CivicPlus prior to the execution of this Agreement ("CivicPlus Property"). CivicPlus provides a right of use to the Client during the period of this Agreement. Rights are non-transferable.
6. The Client will own the graphic designs and web content that are incorporated into the CMS; ownership assumes all invoices for development have been paid by the Client. Client assumes full responsibility of the content maintenance and administration. Client, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Content.
7. Regarding the CMS, Client may not: a) license, sublicense or in any way commercially exploit or make it available to any third party, b) make derivative works based upon it, c) reverse engineer or access it in order to build a similar product, copy features or functions, or share it with third parties, or d) copy any ideas, features, functions or graphics.
8. The CivicPlus name, the CivicPlus and CivicCMS logo, and the products and modules associated with these services provided are trademarks of CivicPlus, and no right or license is granted to use them.

Billing & Payment Terms

9. Renewal Term Annual Services, as set forth on Exhibit A, shall be invoiced in advance of each renewal term. Annual services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual Technology Fee increase.
10. The Client shall only pay those expenses which are specifically defined in this Agreement or defined in writing and approved as an addendum to this Agreement.
11. If the Client's account exceeds 90 days past due, the web service may be temporarily removed from service until the Client's account is made current. Client will be given 30 days' notice prior to any removal of the website for non-payment.
12. The Client will be invoiced electronically through email. Upon request CivicPlus will mail invoices and the Client will be charged a \$5.00 convenience fee.

Taxes

13. It is CivicPlus' policy to pass through sales tax in those jurisdictions where such tax is required. If the Client is tax-exempt, the Client must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and this Agreement will not be taxed. If the Client's state taxation laws change, the Client will begin to be charged sales tax in accordance with their jurisdiction's tax requirements and CivicPlus has the right to collect payment from the Client for past due taxes.

Marketing

14. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages and CivicPlus logo on the left of the URL / Website Address block.
15. Client agrees to allow CivicPlus to include a reference(s) to the Client's website on the CivicPlus corporate website. This may include a mention of the Client, a picture of the Client's home page, and/or a case study of the Client's project.

Liability

16. CivicPlus will not be liable for any act, omission of act, negligence or defect in the quality of service of any underlying carrier or other service provider whose facilities or services are used in furnishing any portion of the service received by the Client.
17. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Client or any entity employed/contracted on the Client's behalf.
18. Client agrees that it is solely responsible for any solicitation, collection, storage, or other use of end-users' Personal Data on any website or online service provided by CivicPlus. Client further agrees that CivicPlus has no responsibility for the use or storage of end-users' personal data in connection with the website or the consequences of the solicitation, collection, storage, or other use by Client or by any third party of Personal Data.
19. To the extent it may apply to any service or deliverable of any SOW, user logins are for designated individuals chosen by Client ("Users") and cannot be shared or used by more than one User. Client will be responsible for the confidentiality and use of User's passwords and user names. Client will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Client Data, and all other data of any kind contained within emails or otherwise entered electronically through any CivicPlus Property or under Client's account. CivicPlus will act as though Client will have sent any Electronic Communications it receives under Client's passwords, user name, and/or account number. Client shall use commercially reasonable efforts to prevent unauthorized access to or use of any CivicPlus Property and shall promptly notify CivicPlus of any unauthorized access or use of any CivicPlus Property and any loss or theft or unauthorized use of any User's password or name and/or user personal information.
20. Client shall comply with all applicable local, federal, and state laws, treaties, regulations, and conventions in connection with its use of any CivicPlus Property.

Indemnification

21. In the event of any loss, damage or destruction to Client property as a result of the negligence, malicious acts or omissions of CivicPlus, its employees, subcontractors, suppliers or agents of any type, CivicPlus shall be liable therefor, and shall repair or replace said loss, damage or destruction at CivicPlus's cost..

To the fullest extent permitted by law, CivicPlus shall indemnify, defend, and hold harmless the Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract from and against all third party claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages) arising out of or resulting from the negligence, malicious acts or omissions during the performance of CivicPlus's work under the Agreement; and any work order, whether such claim, damage, demand, loss of expense is attributable to bodily injury, personal injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent attributable to the negligence or willful misconduct of CivicPlus .. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of CivicPlus or the rights of Town Of Duanesburg This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CivicPlus under any workers compensation acts, disability benefits acts or other employees benefits acts and includes any loss or injury suffered by an employee of CivicPlus or any others who claim to have directly or derivatively sustained injury or damages due to the injury to CivicPlus's employee. This indemnification shall be in addition to any indemnity liability imposed by the contract documents, and shall survive the completion of the work or the termination of the Agreement.

To the fullest extent permitted by law, CivicPlus shall also indemnify, defend, and hold harmless the Town of Duanesburg along with its officers, agents and employees and all other parties required of the contract from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages) arising out of or resulting from, CivicPlus or any of its suppliers or subcontractor of any tier, failure to compensate any of its employees or independent contractors in accordance with any applicable federal, state or local law regarding payment of wages. CivicPlus's assumption of liability is independent from, and not limited in any manner by CivicPlus's insurance coverage obtained.

22. The following insurance requirements shall apply to CivicPlus:

Commercial General Liability (CGL)

- a. Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate,. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent

contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract.

- b. The Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained by contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the subcontractor, the sub-subcontractor or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. Additional Insured products and completed operations coverage maintained for 3 years after completion of the work.

Automobile Liability

- a. Business Automobile Liability with a combined single limit of not less than \$ 1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
- b. The Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

Umbrella/Excess Liability

- a. Umbrella / Excess Liability with limits not less than \$ 5,000,000 per occurrence / aggregate.
- b. Umbrella Liability must include as Additional Insured all entities that are Additional Insured on the CGL and Automobile Liability policies.
- c. Umbrella/Excess Liability shall apply on a primary and not contributory basis.

Workers Compensation and Employers Liability

- a. Employers Liability Insurance with limits not less than \$ 1,000,000 Each Accident for bodily injury by an accident \$ 1,000,000 Each Employee for injury by disease.
- b. Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is optional under the workers compensation act.

All insurance required must be with insurers licensed to conduct business in New York State and acceptable to the Town Of Duanesburg and all other parties as required by contract. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.

Force Majeure

23. Neither party will be liable to the other for any failure or delay in rendering performance arising out of causes beyond its control and without its fault or negligence. Such causes may include, but not be limited to, acts of God or the public enemy, freight embargoes, power outages, and unusually severe weather; but the failure or delay must be beyond its delay.

Miscellaneous

24. At all times and for all purposes hereunder, CivicPlus is an independent contractor and not an employee of the Client.

25. Any and all modifications of the services and/or terms of this agreement, shall be accomplished by an amendment, which must be approved in writing by both parties.

26. The invalidity, in whole or in part, of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

27. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and consent to the terms & conditions of this Agreement.

Client

CivicPlus

By: _____

By: _____

Name: William Wenzel

Name: Millard Rose

Title: Supervisor

Title: VP/General Manager, CivicCMS

Date: _____

Date: _____

**AGREEMENT FOR THE PERFORMANCE
OF PROFESSIONAL SERVICES**

Effective Date of Agreement: 1/01/2023

Consultant: **H2H Geoscience Engineering PLLC**

Client: **Town of Duanesburg**

Project: **Landfill Monitoring for 2023**

WHEREAS, **H2H Geoscience Engineering PLLC (H2H)** has been retained by the **Town of Duanesburg**, hereinafter referred to as the "Client", to provide consulting services for the Project;

WITNESSETH, that in consideration of the mutual covenants hereinafter set forth the Client and H2H herein before named, do hereby agree as follows:

SECTION I - BASIC SERVICES

1.1 H2H agrees to perform professional services described in Attachment I, which is attached hereto and made a part hereof.

1.2 H2H will give consultation and advice to the Client during the performance of its services.

1.3 Additional Services of H2H:

a. Additional Services of H2H are those resulting from changes in the Basic Services, extent or character of the Project or its design, including, but not limited to, changes in size, complexity, H2H's schedule, character of construction or method of financing; and the revision of previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond H2H's control.

b. Additional Services as are mutually agreed upon between H2H and the Client shall be incorporated into this Agreement by written Amendment signed by both Parties. Any such Amendment shall identify the change or additional services and any modification in the Subconsultant's Payment for Services, Method of Payment or period of Service.

SECTION 2 - THE CLIENT'S RESPONSIBILITIES

2.1 Provide general direction to H2H as to the priority and scheduling of items of work to be performed by him or her.

2.2 Review all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by H2H and shall render in writing, decisions pertaining thereto within a mutually acceptable time frame so as not to delay H2H.

2.3 Designate in writing a person to act as the Client's representative with respect to the work to be performed under the Agreement; and such person shall have the authority to transmit instructions, receive information, provide all criteria and full information as to H2H's requirements for the services to be provided and interpret and define the Client's policies and decision.

2.4 Give prompt written notice to H2H whenever the Client observes or otherwise becomes aware of any deviation in the Project requirements due to H2H's work.

2.5 Negotiate with H2H a Supplemental Agreement, in the event that additional services other than those set forth in Attachment I are required of H2H which will set forth the scope of said additional services and the method of compensation.

SECTION 3 - COMPLETION TIME

3.1 H2H will commence work on the Project upon the effective date of this Agreement or upon written instructions from the Client setting forth a different starting date.

SECTION 4 - COMPENSATION AND BASIS FOR PAYMENT

4.1 The Client shall pay H2H for all Basic Services performed in accordance with the charges set forth in the attached Proposal.

4.2 Invoices for partial payment will be submitted monthly to the Client by H2H for work performed during said month. If an invoice remains outstanding for more than forty-five days, Consultant may provide written demand for payment to Client, demanding payment to be made within fifteen days. If payment is not made by Client within such fifteen days, Consultant may terminate this Agreement and sue for damages.

4.3 The compensation set forth in Attachment I shall constitute complete payment for all work and services required to be performed, for all expenditures made and expenses incurred. Additional services will be billed at rates set forth in Exhibit 1.

4.4 If this Agreement is terminated during any phase of the work, H2H shall be paid for services performed up to the date of termination.

SECTION 5 - RESPONSIBILITIES OF H2H ASSOCIATES

5.1 H2H shall perform the Basic Services in a manner consistent with that level of care and skill ordinarily exercised by others under similar circumstances at the time the Basic Services are performed. For the purpose of this Agreement the aforementioned level of care and skill shall be referred to as "Standard of Professional Responsibility". H2H shall furnish skilled personnel and equipment to properly carry out this work to the standards required by the Client.

5.2 If the work to be performed by H2H is of a professional nature, the work shall be performed under the direct supervision of a licensed professional, registered in the State of New York, and said work shall be certified by him or her as required by law.

SECTION 6 – TERMINATION

6.1 The Client may terminate this Agreement if H2H has materially failed to comply with terms of this Agreement after fifteen days written notice of default. Compensation shall be made pursuant to Section 4 of the Agreement for work actually performed, completed and approved by H2H.

SECTION 7 – INSURANCE

7.1 H2H maintains Worker Compensation Insurance with respect to its employees with statutory required limits. H2H also maintains Automobile Liability insurance and General and Professional Liability insurance. Certificates of insurance evidencing such coverage will be provided to Client upon request (Exhibit 2). Client shall be responsible for all other forms of property, casualty and liability insurance coverage required for the project.

SECTION 8 - SUCCESSORS AND ASSIGNS

8.1 H2H and Client each is hereby bound and the partners, successors, executors, administrators and legal representatives of H2H and Client, and to the extent permitted pursuant to paragraph 8.2 the assigns of H2H and Client are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives and said assigns of such other party, in respect of all covenants, agreements and obligations of the Agreement.

8.2. Neither H2H nor Client shall assign, sublet or transfer any rights under or interest in this Agreement, including but without limitation, monies that may become due or monies that are due, without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of the limitation is restricted by law, Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

8.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than H2H and Client, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of H2H and Client and not for the benefit of any other party.

SECTION 9 – INDEMNIFICATION

9.1 H2H agrees to defend, indemnify, protect and save harmless the Client and its employees, agents and servants from and against all suits, claims, demands, or damages of whatsoever kind or nature, but only to the extent they are the result of H2H's negligent acts, errors or omissions or failure to perform any or all services pursuant to this Agreement, in a manner consistent with the Standard of Professional Responsibility as defined in Section 5,1 hereof, Such indemnification shall include, but is not limited to, reasonable expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgements or otherwise (collectively "Losses"), provided that H2H has been notified of the claim or suit in question and has been afforded the opportunity to defend such portion as is covered by this indemnification.

SECTION 10 - OWNERSHIP AND PREPARATIO DOCUMENTS

10.1 All documents prepared or furnished by H2H pursuant to this Agreement are instruments of service and the Client shall retain ownership and a property interest therein only upon payment for services. H2H may make and retain copies for information and reference. Such documents are not intended or represented to be suitable for reuse by the Client or others on any extension of this project or on any other project, other than the project which is the subject of this Agreement. Any reuse without written verification or adaptation by H2H will be at the Client's own sole risk and without liability or legal exposure to H2H, and the Client shall indemnify and hold harmless H2H from all claims, damages, losses and expenses including attorney's fees arising out of or resulting there from, Any such verification or adaptation will entitle H2H to further compensation at rates to be agreed upon by the Client and H2H.

SECTION 11 - RIGHT OF ENTRY

11.1 Consultant will seek permission, from the Client and any other person or entity, to enter from time to time upon the project site or any other real property which may be necessary to perform the services referred to in Section I.

11.2 H2H shall be responsible for any violation or damages which result from H2H's failure to obtain proper right of entry.

11.3 H2H agrees to indemnify and hold harmless the Client and its employees, agents and servants, pursuant to Section 9 of this agreement, for failure to obtain proper right of entry.

SECTION 12 – SEVERABILITY

12.1 This Agreement embodies the entire agreement between the parties. If any provision herein is held invalid, it shall be considered deleted here from and shall not invalidate the remaining provisions hereof.

SECTION 13 - CONTROLLING LAW

13.1 This Agreement is to be governed by the laws of the State of New York.

SECTION 14 – UNDERSTANDING

14.1 The Agreement represents the understanding between H2H and Client and supersedes all prior or oral understandings.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties here have caused this Agreement to be duly executed the ___ day of _____, 2022, to be effective as of the day and year first above written.

H2H Geoscience Engineering PLLC

By: _____
Its: _____

Town of Duanesburg

By: William Wenzel, Supervisor

Attachment 1 --- Basic Services (proposal)
Exhibit 1 --- Schedule of Fees
Exhibit 2 --- Certificate of Insurance

ATTACHMENT 1- BASIC SERVICES



*Geologic Consultants
Environmental Professionals
Construction Services*

179 River Street, Troy, New York 12180
Phone: (518) 270-1620/Fax: (518) 270-1672

December 7, 2022

William Wenzel, Supervisor
Town of Duaneburg
Town Hall
5853 Western Turnpike
Duaneburg, New York 12056

via E-Mail: RTtdball@nycap.rr.com

**RE: Landfill Monitoring & Inspection Proposal for 2023
Town of Duaneburg Landfill (Closed) - Depot Road**

Dear Roger:

H2H, a Bowman company (H2H) proposes to continue performing the quarterly landfill inspections and monitoring in 2023 in accordance with the previously agreed upon services, terms, and conditions. This includes quarterly sampling of the seep and groundwater and landfill inspections. For three of the quarters the seep samples are analyzed for ammonia and iron, and the groundwater samples for routine DEC Part 360 parameters. Once a year the seep and groundwater samples are analyzed for the more comprehensive DEC baseline parameters. We collect two leachate samples for analysis of DEC expanded parameters when we do the baseline analyses. Reporting is quarterly. We now also include an analytical summary table for the leachate that DEC had requested last year.

The cost estimate for 2023 is **22,500**. This includes all laboratory analytical costs. If this proposal is acceptable, we will plan the 2023 services for a routine sampling event first quarter 2023. We rotate the once-per-year more comprehensive annual baseline sampling. If you agree with the terms and scope of this proposal, please send me an email to confirm.

H2H appreciates the opportunity and looks forward to continue working with you. If you have any questions regarding this proposal, or require additional information, feel free to contact me at 270-1620, extension 114.

Kindest Regards,

H2H, a Bowman company

A handwritten signature in black ink that reads "William Oakes".

William Oakes
Project Manager

Copy: Dale Warner
Richard Hisert, Ph.D., Principal, H2H, a Bowman Company

Exhibit 1
Schedule of Fees

Exhibit 2
Certificate of Insurance

**AGREEMENT BETWEEN TOWN OF DUANESBURG AND
DUANESBURG VOLUNTEER AMBULANCE CORPS, INC.
FOR EMERGENCY MEDICAL AND GENERAL AMBULANCE SERVICE IN
THE
TOWN OF DUANESBURG**

THIS AGREEMENT, made the 1st day of January, 2023, between the **TOWN OF DUANESBURG**, 5853 Western Turnpike, Duanesburg, NY 12056 (the “Town”) and **DUANESBURG VOLUNTEER AMBULANCE CORPS, INC.** (“DVAC”), a not-for-profit corporation organized and existing under the laws of the State of New York, with its office and principal place of business at 130 Cole Rd, Delanson, New York 12053 (the “Agreement”);

WITNESSETH:

WHEREAS, the Town is desirous of entering into an agreement for providing emergency medical and general ambulance services including, but not limited to, Basic Life Support (“BLS”) and Advanced Life Support (“ALS”) (collectively, “Ambulance Services”), within the Town pursuant to the provisions of New York State General Municipal Law (“GML”) § 122-b; and

WHEREAS, DVAC is desirous of furnishing Ambulance Services within the Town, under the terms and conditions set forth herein; and

WHEREAS, at a regular meeting of the Town Board of the Town of Duanesburg held on December 30, 2022, the Town duly authorized this Agreement with DVAC upon the terms and conditions set forth herein; and

WHEREAS, this Agreement has been authorized by the Board of Directors of DVAC.

NOW THEREFORE, in consideration of the mutual promises recited herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Town does contract with DVAC to furnish Ambulance Services within the Town, and DVAC agrees to furnish such Ambulance Services, subject to the following provisions:

1. TERM

This Agreement shall be effective January 1, 2023 until December 31, 2023 (the “Term”), unless otherwise extended by written agreement of the parties.

2. RENEWAL AND MODIFICATION

No provision or term of this Agreement shall be modified, amended, waived or limited except by written agreement expressly referring hereto and to the provision

so modified, amended, waived or limited and signed by both parties to this Agreement.

3. OBLIGATIONS OF DVAC

DVAC will:

- 3.1 Provide Ambulance Services within the Town. DVAC will be solely responsible for supplying, maintaining, and equipping ambulances and for providing sufficient and properly trained personnel for the provision of such services and shall comply with all applicable laws and regulations including, but not limited to, the mandates of the New York State Department of Health Bureau of Emergency Medical Services and State Emergency Medical Advisory Committee, the Regional Emergency Medical Services Council of the Hudson Mohawk Valleys and Regional Emergency Medical Advisory Committee for the operation of such Ambulance Services. DVAC will arrange for ALS intercept services on an as needed basis for the Town.
- 3.2 Provide trained and qualified persons to provide Ambulance Services in accordance with the laws of New York State, Department of Health Regulations, Protocols and Policy Statements, and Regional and DVAC protocols and procedures.
- 3.3 Provide or arrange for the provision of Ambulance Services twenty-four (24) hours a day, seven (7) days per week for all persons requiring such services within the Town.
- 3.4 Incur and pay for the following operating expenses:
 - Heat, lights, telephone and all other utilities in connection with DVAC's facilities;
 - General maintenance, repairs and supplies for the equipment, vehicles and housing for ambulances and meetings;
 - Replacement of medical supplies and equipment;
 - All liability insurance on the ambulance vehicles and DVAC facilities;
 - All liability, contractual liability, malpractice, workers compensation, contractual and/or errors and omissions insurance covering all members of DVAC; and
 - All training and continuing education of its members, including such certification and recertification as may be required by law.

- 3.5 Coordinate the provision of Ambulance Services provided in the Town by other ambulance service companies and providers of emergency medical services (“EMS”) as mutual aid on an as-needed basis in accordance with federal, state, regional, and DVAC protocols and policies.
- 3.6 Provide appropriate quarters to station personnel and to store vehicles and other equipment for use in the Town.
- 3.7 No later than July 31st of each year of the Term, provide the Town with an inventory of all property and equipment owned by or in the custody of DVAC that is utilized or intended to be utilized for the provision of Ambulance Services. For purposes of this paragraph the term “property and equipment” shall mean any item with a replacement cost in excess of \$2,000.00 dollars.
- 3.8 No later than July 31st of each year of the Term provide to the Town a listing of all cash assets of DVAC, including reserve accounts.
- 3.9 Seek fee collection from persons utilizing the Ambulance Services and account for same as more fully set forth in this Agreement. Unless otherwise directed by a lawful mandate by the Town, DVAC will seek to collect co-pays or deductibles from users of the Ambulance Service as part of Fee Collection set forth in Section 5.
- 3.10 DVAC shall provide the Town with the accounting and reporting of calls, fees collected, and other matters as required in other portions of this Agreement.
- 3.11 On an annual basis no later than November 1st of each year of the Term, DVAC will make a recommendation to the Town as to the appropriate amount of fees or charges for Ambulance Services to be considered for approval by the Town for the forthcoming year. Such recommendation shall be reasonably founded on empirical data and shall provide the anticipated usual and customary rate(s) for said Ambulance Services in the forthcoming year. The Schedule of Fees for the initial term is appended hereto as **Addendum A**.
- 3.12 Warrants that any and all of DVAC corporate or internal conditions precedent to the execution of this Agreement have been satisfied or ratified by DVAC and that the signatory of this Agreement on behalf of DVAC has the authority to execute this Agreement and to bind the corporation.
- 3.13 Keep in force its Ambulance Service Certificate and maintain compliance with the applicable requirements of Article 30 of the Public Health Law and State Emergency Medical Services Code.

4. OBLIGATIONS OF THE TOWN

- 4.1 In consideration of DVAC successfully and fully providing the Ambulance Services for the Term, DVAC shall be compensated in the amount of up to **\$576,112.25** (the "Contract Fee"). The Contract fee shall be comprised partially of a payment from the Town (the "Town Payment Portion") and partially of fee collection performed by DVAC pursuant to Section 5 (the "Fees Collected Portion"). For the Town Payment Portion, the Town shall pay **\$386,112.00** on an annual basis, to DVAC in quarterly payments in the amount of **\$96,528.00**, payable on the first business day in the months of March, June, September and December during the term of this contract.

The Fees Collected Portion of the Contract Fee shall be raised through fee collection performed by DVAC pursuant to Section 5. Should the amount of fees collected by DVAC during the Term, plus the Town Payment Portion, exceed the Contract Fee, the excess amount shall be remitted to the Town. If the amount of fees collected by DVAC during the Term, plus the Town Payment Portion, is less than the Contract Fee, such shortfall shall be borne by DVAC. The Town is hereby relieved from the obligation to pay DVAC more than the Town Payment Portion of **\$386,112.00**.

The Contract Fee represents the present financial commitment made by Town to DVAC plus additional monies required to ensure ambulance service coverage of the Town as set forth herein through contracting for additional day-time staffing.

- 4.2 The Town shall only be responsible to DVAC for the amounts set forth in Paragraph 4.1.
- 4.3 The Town may, pursuant to General Municipal Law Section 122-b (2), formulate such rules as it deems necessary for the provision of Ambulance Services and will establish a schedule of fees or charges to be paid by such persons using the services. Such fees and charges shall conform with federal and State mandates and shall be within the range of usual and customary rates for ambulance services in the region.
- 4.4 The Town may enact such lawful resolutions as necessary to affect the intended purposes of this Agreement.
- 4.5 The Town may authorize emergency call answering and ambulance dispatching of calls originating in the Town through the appropriate dispatch center.
- 4.6 Upon request of DVAC, the Town may plow, sand, salt and/or de-ice DVAC facilities so as to enable DVAC to render Ambulance Services to the Town. The Town shall retain sole discretion regarding whether to

perform such snow removal and ice removal/mitigation services. With respect to the Town's performance of snow removal and ice removal/mitigation services, DVAC will defend and indemnify the Town to fullest extent permitted by law from and against any liability or claims except for liability arising out of the negligence or willful misconduct of the Town.

5. FEE COLLECTION

- 5.1 DVAC will seek fee collection from all persons utilizing the Ambulance Services.
- 5.2 DVAC, as the transporting agency, will bill patients, their insurers (including private insurers, Medicare and Medicaid) and guarantors at the usual and customary rates for the locale and as approved by the Town for the provision of Ambulance Services. Bills for services will be submitted to patients transported to or from a health care or health related facility, for properly chargeable ALS and BLS treatment, and for evaluations, assessments, and assistance that are deemed properly chargeable Ambulance Services as permitted by law. The expenses incurred for pursuing fee collection shall be borne by DVAC and subtracted from those sums received from third parties for service, including any additional costs to DVAC for providing billing services attributable to ALS billing. DVAC may contract with a vendor(s) to supply billing services and the use of such vendor are subject to approval by the Town. Any proposed contracts for billing services or for contactors to be retained by DVAC in order to pursue fee collection are subject to the approval of the Town, and Town's approval of such contracts shall not be unreasonably withheld.

6. BUDGETING

- 6.1 Prior to the fifteenth day of September of each year of the Term, a DVAC-designated representative will review and present to the Town Supervisor a proposed budget for the following year. In addition, a designated DVAC representative will be in actual attendance during the consideration by the Town Board of the Town for the proposed budget for the forthcoming calendar year to address any question/concerns that may arise. The budget shall contain sufficient detail of the projected expenses, fees collected, and fund balances for the forthcoming year and be in such form as the Town may request. In addition, the proposed budget will contain a listing of the amount of fees collected through June 30 of the present calendar year and a forecast of projected fee collection through the balance of the present calendar year.

7. AUDIT AND FINANCIAL CONTROL

7.1 Fees collected by DVAC, will be deposited in a federally insured bank account. The bank account shall be established and structured in a manner that the release of funds may only be made upon the authorization of the Town. The release of funds in a total amount less than or equal to the approved annual budgeted amount is hereby authorized pursuant to this Agreement. The release funds in excess of the approved annual budgeted amount may only be authorized upon the further express, written consent of the Town pursuant to Paragraph 2. The designated fiscal officer of the Town shall implement procedures for the accounting of fees collected by DVAC and for the release of account funds to provide for the orderly administration, disbursement, and accounting of funds from such account. The procedures are intended to continue and may be refined or modified as the Town deems necessary or as may be required by law.

7.2 On a Quarterly Basis, a DVAC representative will present to the TOWN Board in accordance with Addendum B

7.2.1 DVAC will provide the Town with reports prepared by DVAC or its billing vendor demonstrating the number of calls generating bills, amounts billed, fees collected, accounts deemed uncollectible, and such other non-privileged financial information as the Town may require.

7.2.2 DVAC will provide the Town with copies of bank statements (with balances) and account reconciliations for the collection funds designated in Section 7.1 of this Agreement.

7.2.3 DVAC will provide to the Town Board during the quarterly review with the Town Board with the data quarter to date compared to YTD ambulance billing reports that include amounts billed during and the amount of fees collected during the preceding month, the amount of write-offs of uncollectable bills, if any, the percentage rate of collection in amount collected versus amount billed, and the billable call volume as a percentage of total call volume.

7.3 On an Annual Basis

No later than May 1:

7.3.1 DVAC will provide the Town with an annual summary of the number of calls and call type, collections, expenses, and other measurable deliverables as the Town may request in a format acceptable to the Town.

- 7.4 DVAC will provide the Town a copy of DVAC's (current) filed IRS Form 990 each year during the term of this Agreement. In the event that DVAC obtains an extension from the IRS to file its Form 990 beyond May 1, DVAC will provide a copy of said Form 990 to the Town as soon as possible after filing.
- 7.5 With the exception of the annual audit prepared by the certified public accountant, any reports and documentation required herein will be provided to the Town in a format either approved by or acceptable to the Town Supervisor. Nothing herein shall require or imply that DVAC is obligated to disclose a patient's identity or other protected health information as governed by HIPAA or other governmental statute, rule or regulation.
- 7.6 Donations made to DVAC and other sources of revenue not arising from fee collection (e.g. grants, fundraisers, memorials, monetary gifts) shall be disclosed but shall not be considered collections for purposes of this Section or monies to be used to subsidize or offset ambulance service delivery costs set forth in Section 4.1, above.

8. INDEMNITY

To the fullest extent permitted by law, DVAC will defend, indemnify and hold harmless the Town in any claim for personal injuries including death, damage to persons or property, misappropriation of funds, injunctive relief or administrative enforcement arising out of DVAC's operations, actions, or obligations under the Agreement. To the fullest extent permitted by law, the Town will indemnify and hold harmless DVAC in any claim for personal injuries including death, damages to persons or property, injunctive relief or administrative enforcement arising out of the Town's operations, actions, or obligations under this Agreement.

9. INSURANCE

9.1 DVAC shall purchase and maintain in full force and effect insurance policies with the following limits of insurance:

9.1.1 Commercial General Liability (GCL) / Professional Health Care Liability

Commercial General Liability / Professional Health Care Liability with limits not less than \$1,000,000 per occurrence or medical incident, \$10,000,000 general aggregate and products / completed operations aggregate for each occurrence or medical incident.

The Town shall be included as Additional Insured. Additional Insurance coverage shall apply on a primary and not contributory basis.

9.1.2 Management Liability

Each offense or Wrongful Act - \$1,000,000 / \$10,000,000 aggregate. Defense Expense for Injunctive Relief - \$50,000

9.1.3 Automobile Liability

Business Automobile Liability with a combined single limit of not less than \$1,000,000 limit per accident, including owned, non-owned, leased, and hired vehicles. Volunteers / Employees must be identified as insured under non-owned automobiles.

The Town shall be included as Additional Insured on a primary and not contributory basis.

9.1.4 Umbrella / Excess Liability

Umbrella / Excess Liability with limits not less than \$10,000,000 per occurrence / \$10,000,000 annual aggregate – excess over automobile, general liability, professional health care liability, and management liability.

Umbrella Liability must include the Town as Additional Insured.

Umbrella / Excess Liability shall apply on a primary and not contributory basis.

9.1.5 Workers Compensation and Employers Liability

Employers Liability Insurance with limits not less than \$1,000,000 Each Accident for bodily injury by an accident and \$1,000,000 Each Employee for injury by disease.

9.2 All insurance required herein must be with insurers licensed to conduct business in New York State and acceptable to the Town. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.

9.3 Notice of Cancellation. All policies and Certificates of Insurance shall expressly provide that the Town must receive thirty (30) days written notice in the event of material alteration, cancellation, or non-renewal coverage.

9.4 Waiver of Subrogation. All policies must include a Waiver of Subrogation against the Town for general liability professional health care liability, automobile liability, umbrella/excess liability, workers compensation and employer's liability.

- 9.5 Evidence of Insurance. DVAC shall furnish the Town a Certificate(s) of Insurance executed by a duly authorized representative of each insurer, setting out the compliance with the insurance requirements set forth above. Certificates of Insurance must indicate the amounts of any and all deductibles. A copy of the Additional Insured Endorsement(s) must be provided to the Town. Neither failure to provide such certificate nor the failure of the Town to request such certificate shall be deemed to be a waiver of DVAC's obligation to provide evidence of such insurance coverages.
- 9.6 All liability insurance policies procured and maintained by DVAC protecting against claims arising out of the operations, actions, or obligations of DVAC in providing Ambulance Services or related services arising directly or indirectly therefrom shall name the Town as an additional insured.
- 9.7 DVAC shall be responsible for providing workers' compensation insurance and or Volunteer Ambulance Workers' Benefit Insurance coverage for its employees. TOWN is not responsible for paying for and/or providing Volunteer Ambulance Workers' Benefit Insurance to any DVAC personnel above any amounts paid to DVAC by TOWN as set forth above.

10. NO WAIVER

The failure by either party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other covenant, agreement, term or condition. By notice duly given, any party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement or any duty, obligation or covenant of any other party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other existing, or subsequent, breach.

11. TERMINATION

- 11.1 Either party may terminate this Agreement for convenience upon sixty (60) days written notice to the other party.
- 11.2 Either party may terminate this Agreement for material breach upon (30) days written notice to the other party.
- 11.3 Upon termination, the pro-rated amount of the Contract Fee previously paid by the Town for the balance of the Term after the effective date of the termination will be reimbursed to the Town by DVAC. If, upon the effective date of termination, the Town owes DVAC payment for Ambulance

Services rendered through date of termination, such payment will be made by the Town to DVAC within thirty (30) days of the effective date of termination.

12. ASSIGNMENT

In accordance with the provisions of Section 109 of the General Municipal Law, DVAC is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or its right, title or interest in this Agreement, or its power to execute this Agreement, to any other person without the previous consent in writing of the Town.

13. NOTICE

All notices, offers and communications required or permitted by this Agreement shall be made in writing and shall be deemed given when personally delivered to a party, or mailed by certified mail, return receipt requested, addressed as follows:

To the Town:

Town Board of the Town of Duanesburg
Town of Duanesburg Town Hall
5853 Western Turnpike
Duanesburg, New York, 12056

With a copy to:

Terresa M. Bakner, Esq.
Whiteman Osterman & Hanna, LLP
One Commerce Plaza, Suite 1900
Albany, New York, 12260

To DVAC:

Duanesburg Volunteer Ambulance Corps
P.O. Box 130
Delanson, New York, 12053

With a copy to:

Timothy Hannigan, Esq.
Hannigan Law Firm, PLLC
388 Kenwood Avenue
Delmar, New York 12054

By notice given pursuant to this paragraph, either party may designate any further or different address to which subsequent notices, offers or other communications shall be sent.

14. SEVERABILITY

To the extent permitted by law, if any provision of this Agreement is deemed by a Court of competent jurisdiction to be void or voidable, all other provisions shall remain enforceable and effective.

15. VENDOR STATUS

DVAC is a vendor to the Town. DVAC is neither an agent nor a department of the Town. Nothing herein should be deemed to infer that an employment or agency relationship exists between the parties.

16. MISCELLANEOUS

16.1 This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements and understandings of every kind and nature among them. No party shall be bound by any condition, definition or representation other than for which is expressly provided in this Agreement.

16.2 This Agreement shall be subject to the laws of the State of New York.

16.3 The captions and section heading used in this Agreement are for reference related purposes only to aid the reader and are without substantive effect to the terms that follow thereafter.

TOWN OF DUANESBURG

**DUANESBURG VOLUNTEER
AMBULANCE CORPS, INC.**

By: _____
William Wenzel, Supervisor

By: _____
Robert Cuttita, Chairman of DVAC

ADDENDUM A – SCHEDULE OF FEES
January 1, 2023 through December 31, 2023

ALS CHARGES

ALS TRANSPORT LEVEL 1	\$ 1283.27
ALS TRANSPORT LEVEL 2	\$ 1404.69

BLS CHARGES

BLS REFUSAL - MVA	\$ 138.34
BLS EMERGENCY TRANSPORT	\$ 925.70
BLS NON-EMERGENCY TRANSPORT	\$ 769.16
MILEAGE (LOADED)	\$ 31.02

**ADDENDUM B SCHEDULE FOR QUARTERLY REPORTING
January 1, 2023 through December 31, 2023**

ADDENDUM B SCHEDULE FOR QUARTERLY REPORTING	
Review period for Quarter 1, (January, February and March) of the current contract year	Presented to the Town Board, by a DVAC representative, during the month of April of the current contract year
Review period for Quarter 2 (April, May and June) of the current contract year	Present to the Town Board, by a DVAC representative during the month of July of the current contract year
Review period for Quarter 3 (July, August and September) of the current contract year	Present to the Town Board, by a DVAC representative, during the month of October of the current contract year.
Review period for Quarter 4 (October, November and December) of the preceding contract year. In addition, DVAC will provide a 12-month review for the period commencing on January 1 through December 31 for the preceding contract year	Present to the Town Board, by a designated DVAC representative during the month of January for the preceding contract year

**INTERMUNICIPAL AGREEMENT
BETWEEN
THE TOWN OF DUANESBURG,
THE TOWN OF DUANESBURG
SUPERINTENDENT OF HIGHWAYS
&
THE VILLAGE OF DELANSON**

This Agreement entered into on December 30, 2022 between the Village of Delanson, a municipal corporation (“Delanson”), the Town of Duanesburg, a municipal corporation (“Duanesburg”), and the Duanesburg Superintendent of Highways (“Highway Dept.”) is to be in effect until December 31, 2023.

WHEREAS, the governing bodies of Delanson and Duanesburg, by majority vote, approved a prior intermunicipal agreement to share certain services whereby Duanesburg would provide Delanson road maintenance and said governing bodies have determined that it is in the best interest of said municipal corporations to renew and continue the cooperative agreement by entering into this Agreement; and

WHEREAS, the Highway Dept. through its Superintendent has approved this Agreement; and

WHEREAS, Delanson currently owns and maintains various public streets and roadways within Delanson; and

WHEREAS, said streets and roadways are in need of maintenance and repair and need to be snow plowed and sanded, as required; and

WHEREAS, Duanesburg, through the Highway Dept., has the available human resources, machinery and equipment to provide said services to Delanson; and

WHEREAS, Delanson is desirous of contracting with Duanesburg for the purpose of obtaining such services from Duanesburg, as more particularly set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

Authority

1. This Agreement is entered into pursuant to the terms of the General Municipal Law Section 119-o and is authorized pursuant thereto.

Areas of Service

2. A. Duanesburg through the Highway Dept. hereby agrees to provide street maintenance as set forth herein for the following Village Streets located in Delanson (the "Village Streets"):
 - (i) School Drive;
 - (ii) Alexander Road;
 - (iii) Cooley Heights;
 - (iv) Stewart Lane;
 - (v) Thousand Acre Road;
 - (vi) Newton Street;
 - (vii) Charles Street;
 - (viii) Railroad Avenue;
 - (ix) Rose Street;
 - (x) West Shore Road;
 - (xi) Elm Street;
 - (xii) Water House Road;
 - (xiii) Victoria Drive; and
 - (xiv) Michael Drive.

B. Duanesburg through the Highway Dept., also hereby agrees to provide maintenance as set forth herein for the following Additional Areas located in Delanson (the "Additional Areas");

- (i) The Village Hall Parking lot and front apron;
- (ii) The Village Water Pump building on Route 395.

Scope of Services

3. Maintenance for the Village Streets and the Additional Areas shall be provided, as needed, as determined by the Highway Dept., as follows:
 - A. Snow plowing with sanding and salting as required;
 - B. Ditching to existing ditched areas to promote drainage;
 - C. Filing of potholes and minor repair due to damage caused by Highway Dept. snow plowing;
 - D. Mowing of shoulders of Village Streets in the mid-summer and in the fall;
 - E. Maintenance of existing signs, which include clearing any obstruction which would limit visibility. The cost of the replacement or additional signs and posts are to be borne by Delanson;

- F. Brush and tree removal along streets where traffic is impeded or visibility becomes limited due to the plant growth;
- G. Sweeping of village streets and additional areas which includes village hall lot.

Additional Services

- 4. A. As an additional service, Duanesburg, through the Highway Dept., shall perform road grading once a year on the village owned portions of Water House Road and McMillan Well access driveway (gravel surfaces), if needed, as determined by the Highway Dept. Any cost of material shall be borne by Delanson, and shall be reimbursed to Duanesburg if paid by Duanesburg.

B. On or before May 1, 2023 the Highway Department shall inspect the Delanson Village Streets covered by this Agreement and issue a written report, signed by the Duanesburg Highway Superintendent, to the Delanson Village Board. This report shall set forth the then current condition of each Village Street and shall include recommendations for improvements and repairs.

Exclusions

- 5. Maintenance shall not include: Street resurfacing, street rebuilding, work to water distribution system and/or work to fire hydrants, or sidewalk maintenance such as snow and ice removal.

Term

- 6. This Agreement shall be effective from January 1, 2023 until December 31, 2023. This Agreement will not be automatically renewed.

Payment for Services

- 7. Delanson shall pay to Duanesburg:
 - A. A base fee of \$29,414.00 (“Base Fee”). Payment shall be made on or before November 1, 2023. There will be no special assessment or increase in Duanesburg Town tax that would be directed specifically to Delanson assessed properties as a result of this Agreement or the work undertaken by Duanesburg hereunder. Any overtime, labor, fuels and sanding materials incurred for work within the scope of this Agreement are included in the Base Fee. Other labor, equipment and material costs will be added as described in section 7B of this Agreement.

- B. Requests for services outside the scope of this Agreement must be made in writing to Duanesburg and to the Highway Dept. setting forth the scope of the additional work requested. The Highway Dept. shall notify Delanson as to whether it is willing and able to perform such work. Any such work shall be performed at an hourly rate of \$55 per hour, per person performing the work for labor during normal Highway Dept. hours (Monday through Friday, 7 a.m. to 3:30 p.m.), and the rate of \$75 per hour, per person during other than normal Highway Dept. hours, plus additional charges for equipment and for materials. Equipment use rates shall be set forth in a notice from the Highway Dept. to Delanson. Additional materials shall be invoiced to Delanson at actual cost to Duanesburg. If acceptable to Delanson, the Mayor of Delanson, the Town Supervisor of Duanesburg and the Superintendent of the Highway Department, the three of them shall meet to establish a schedule for completion of the additional work specified, and a schedule of payment for such additional work.
- C. The Village Treasurer shall be the custodian of all funds related to this Agreement and is hereby granted the authority to make all necessary and legally valid payments due and owing pursuant to this Agreement.
- D. If payments are untimely (as set forth in sections 7A and 7B, above), Duanesburg may terminate this Agreement upon not less than thirty (30) days prior written notice to Delanson, in addition to any other legal remedies it may have. In the event of such termination, Duanesburg shall be entitled to retain a prorated amount of the base fee, based upon the number of day this contract has been in effect, through the actual date of termination as set forth in the termination notice. If amounts are then owed to Duanesburg pursuant to paragraph 7B, Duanesburg shall be entitled to retain such amounts from any part of the base fee to be refunded, and may pursue payment of any balance owed.

Employees

8. A. The Highway Dept. personnel employed to implement the terms of this Agreement shall remain the employees of Duanesburg and be deemed Duanesburg employees for all purposes.
- B. In all cases, Duanesburg shall insure that each employee is covered by Worker's Compensation for all activities to be performed pursuant to this Agreement.

Work Supervision

9. The Town of Duanesburg Highway Superintendent, as directed by the Duanesburg Town Board and the Delanson Village Board, shall supervise the activities set forth in this Agreement. However, no changes may be made to the terms of this Agreement except by majority vote of each participating municipality, and consent of the Highway Dept., followed by the execution of a written addendum to this Agreement.

Delanson's Right to Terminate

10. Delanson shall have the right to terminate this Agreement, for good cause after a thirty (30) day cure period. For the purposes hereof, good cause shall be the failure of Duanesburg and the Highway Dept. to perform any material aspect of this Agreement. Delanson's rights to terminate this Agreement shall not accrue until thirty (30) days after Delanson provides written notice of the defects or breaches to Duanesburg and the Highway Dept and Duanesburg or the Highway Dept. fails to cure or otherwise respond to the notice. Said notice shall set forth in detail the material obligations of this Agreement that has not been performed.

Dispute Resolution

11. The parties will make every effort to resolve any disputes regarding the work to be performed pursuant to this Agreement in a prompt and professional manner. If a dispute cannot be resolved by informal means, either party may initiate the following dispute resolution process:
 - (a) The Village Mayor, Town Supervisor and the Highway Superintendent will meet to attempt to resolve the dispute.
 - (b) If such meeting does not resolve the dispute, the parties shall attempt to resolve the dispute through mediation by a mutually agreed up mediator. Each party shall pay its own attorney's fees and equally share the costs and expenses of the mediator.
 - (c) If the mediation does not result in a voluntary settlement agreement, the parties shall arbitrate the dispute before a single arbitrator pursuant to the Rules of the American Arbitration Association after service of a notice of intention to arbitrate by any of the parties. The arbitrator's decision shall be final and binding on all parties.

Indemnification

12. To the fullest extent permitted by law, Delanson shall indemnify, defend, and hold harmless Duanesburg along with their respective officers, agents and employees and all other parties required of the contract from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities,

(including all costs reasonable attorneys' fees, consequential damages, and punitive damages) arising out of or resulting from, or alleged to arise out of or arise from, the performance of work under the Agreement, and any work order, whether such claim, damage, demand, loss of expense is attributable to bodily injury, personal injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent attributable to the negligence or willful misconduct of Delanson or any entity for which it is legally responsible or vicariously liable: regardless of whether the claim is presented by Delanson's employee, his/her spouse, legal or domestic partner under applicable state law and/or dependents of Delanson's employee. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of Delanson or the rights of Duanesburg This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Delanson under any workers compensation acts, disability benefits acts or other employees benefits acts and includes any loss or injury suffered by an employee of Delanson or any others who claim to have directly or derivatively sustained injury or damages due to the injury to Delanson's employee. This indemnification shall be in addition to any indemnity liability imposed by the contract documents, and shall survive the completion of the work or the termination of the Agreement.

Duanesburg agrees to indemnify, defend and hold harmless Delanson, its officers, agents and employees from and against all lawsuits, claims, causes of action, costs, expenses, damages, liabilities, including reasonable attorney's fees, which Delanson may incur as a result of injury to persons or damage to property to the extent that such claims arise out of the services Duanesburg performs pursuant to this Agreement, but only to the extent attributable to the negligence or willful misconduct of Duanesburg or any entity for which it is legally responsible or vicariously liable.

Insurance

13. The following insurance requirements shall apply to Delanson:

Commercial General Liability (CGL)

- a) Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products - completed operations aggregate. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract.
- b) Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional

Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained by contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the subcontractor, the sub-subcontractor or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. Additional Insured products and completed operations coverage maintained for 3 years after completion of the work.

Automobile Liability

- a) Business Automobile Liability with a combined single limit of not less than \$ 1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
- b) Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

Umbrella/Excess Liability

- a) Umbrella / Excess Liability with limits not less than \$ 5,000,000 per occurrence /aggregate.
- b) Umbrella Liability must include as Additional Insured all entities that are Additional Insured on the CGL and Automobile Liability policies.
- c) Umbrella/Excess Liability shall apply on a primary and not contributory basis.

Workers Compensation and Employers Liability

- a) Employers Liability Insurance with limits not less than \$ 1,000,000 Each Accident for bodily injury by an accident \$ 1,000,000 Each Employee for injury by disease
- b) Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is optional under the workers compensation act.

All insurance required must be with insurers licensed to conduct business in New York State and reasonably acceptable to the Duanesburg and all other parties as required by contract. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.

Notices

14. Should any written notice be required by one party to either of the other parties pursuant to the terms of this Agreement, such notice shall be sent to the following individuals at the addresses set forth below by first class mail and certified mail, return receipt requested via the United States Postal Service:

Duanesburg Town Supervisor and Town Attorney
5853 Western Turnpike
Duanesburg, New York 12056

Delanson Village Mayor and Village Attorney
P.O. Box 235
Delanson, New York 12053

Duanesburg Superintendent of Highways
5799 Western Turnpike
Duanesburg, New York 12056

Authority of Execution

15. The Duanesburg Supervisor, the Delanson Mayor and the Superintendent of Highways have executed this Agreement and, by resolution, each has been duly authorized and empowered to do so. This Agreement shall be executed in triplicate, and at least one copy shall be permanently filed, after execution thereof, in the Office of the Duanesburg Town Clerk.

No Waiver

16. The failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other, covenant, agreement, term or condition. By notice duly given, any Party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement, or any duty, obligation or covenant of any other Party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other then existing, or subsequent, breach.

Modification

17. No provision hereof shall be modified, amended, waived or limited except by a written agreement expressly referring hereto and to the provision so modified, amended, waived or limited and signed by both parties to this Agreement.

Severability

18. Any provisions of applicable law which supersede or invalidate any provision of this Agreement shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be enforced as if such superseded or invalid provision(s) were deleted.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Town of Duaneburg and the Village of Delanson have caused their seals to be affixed hereto and have caused this Agreement to be duly executed.

Date: _____

DUANESBURG TOWN SUPERVISOR

William Wenzel

Date: _____

DELANSON VILLAGE MAYOR

Date: _____

DUANESBURG TOWN SUPERINTENDENT OF
HIGHWAYS

**INTERMUNICIPAL AGREEMENT
BETWEEN
THE TOWN OF DUANESBURG
AND
THE VILLAGE OF DELANSON
FOR BUILDING INSPECTOR SERVICES**

This Agreement entered into on December 30, 2022 between the Village of Delanson, a municipal corporation (hereinafter referred to as "Delanson") and the Town of Duanesburg, a municipal corporation (hereinafter referred to as "Duanesburg").

WHEREAS, the governing bodies of Delanson and Duanesburg, by majority vote, approved the actions set forth in this Agreement and said governing bodies have determined that it is in the best interest of said municipal corporations to enter into this cooperative Agreement; and

WHEREAS, Delanson and Duanesburg each are authorized to employ a Building Inspector, for such lawful purposes as are necessary or required by each; and

WHEREAS, the position of Delanson Building Inspector is currently vacant; and

WHEREAS, Delanson is desirous of contracting with Duanesburg for the purpose of obtaining from Duanesburg the services of its Building Inspector, as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

Authority

1. This Agreement is entered into pursuant to the terms of General Municipal Law Section 119-o and is authorized pursuant thereto.

Scope of Services

2. The Town of Duanesburg Building Inspector (hereinafter referred to as "BI") shall provide such building inspection services to Delanson as are currently provided by them to Duanesburg, at the reasonable request of Delanson, and subject to approval and acceptance by the BI of such assignment, on a case by case basis. The BI shall have the right to decline to perform any service for Delanson if, in the BI's reasonable discretion, such service is unlawful or inappropriate. All services shall be provided as promptly as practicable under the circumstances.
3. The BI shall provide to Delanson, no later than noon on the second Monday of each month, a report of activities for the previous calendar month to include

applicant name, property address, type of application, copy of the application with the fee indicated and BI/clerk hours.

Other Work

4. In the event Delanson requires work to be done that is not specified in this Agreement, it shall make a written request to Duanesburg, setting forth the scope of the work requested. Duanesburg shall notify Delanson as to whether it is willing and able to perform such work, and the terms and conditions for performance of such work.

Term

5. This Agreement shall be effective from January 1, 2023 until December 31, 2023. This Agreement will not automatically renew.
6. Notwithstanding the foregoing, however, either party may terminate this agreement upon not less than thirty (30) days prior written notice to the other party.

Payment for Services

7. The services to be provided by Duanesburg to Delanson pursuant to this Agreement will be compensation set forth below:
 - a. Delanson shall remit payment to Duanesburg in one payment Totaling Two Thousand Five Hundred Dollars (**\$2,500.00**) by November 1, 2023.
 - b. Payments shall be made by Delanson to Duanesburg within thirty (30) days of the execution of this contract.
 - c. The Delanson Village Treasurer shall be the custodian of all funds relative to this Agreement and is hereby granted the authority to make all necessary and legally valid payments due and owing pursuant to this Agreement.

Employees

8. The employees whose services shall be utilized to implement the terms of the terms of this Agreement shall for all purposes remain the employees of Duanesburg.
9. In all cases, Duanesburg shall ensure that each employee is covered by Worker's Compensation Insurance for all activities to be performed pursuant to this Agreement.

Work Supervision

10. The Town of Duanesburg shall supervise the activities set forth in this Agreement. No changes may be made to the terms of this Agreement except by majority vote of each participating municipality, followed by the execution of a written addendum to this Agreement.

Inspection Fees

11. All inspection fees received by the BI shall be remitted to Duanesburg and disbursed to Delanson on a monthly basis. Duanesburg reserves the right to retain any such fees to offset amounts due it from Delanson.

Dispute Resolution

12. The parties will make every effort to resolve any disputes regarding the work to be performed pursuant to this Agreement in a prompt and professional manner. Should any dispute appear unresolvable, either party may request the institution of the following dispute resolution process:
 - a. The Village Mayor and Town Supervisor will meet to attempt to resolve the dispute.
 - b. If such meeting does not resolve the dispute, the parties shall submit to arbitration before a single arbitrator pursuant to the Rules of the American Arbitration Association after service of a notice of intention to arbitrate by any of the parties.
 - c. The arbitrator's decision shall be final and binding on all parties.

Notices

13. Should any written notice be required by one party to either of the other parties pursuant to the terms of this Agreement, such notice shall be sent to the following individuals at the addresses set forth below by first class mail, return receipt requested via the United States Postal Service:

Duanesburg Town Supervisor & Town Attorney
5853 Western Turnpike
Duanesburg, New York 12056

Delanson Village Mayor & Village Attorney
P.O. Box 235
Delanson, New York 12053

Indemnification

14. To the fullest extent permitted by law, Delanson shall indemnify, defend, and hold harmless Duanesburg along with their respective officers, agents and employees and all other parties required of the contract from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages) arising out of or resulting from, or alleged to arise out of or arise from, the performance of work under the Agreement, and any work order, whether such claim, damage, demand, loss of expense is attributable to bodily injury, personal injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent attributable to the negligence or willful misconduct of Delanson or any entity for which it is legally responsible or vicariously liable: regardless of whether the claim is presented by Delanson's employee, his/her spouse, legal or domestic partner under applicable state law and/or dependents of Delanson's employee. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of Delanson or the rights of Duanesburg. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Delanson under any workers compensation acts, disability benefits acts or other employees benefits acts and includes any loss or injury suffered by an employee of Delanson or any others who claim to have directly or derivatively sustained injury or damages due to the injury to Delanson's employee. This indemnification shall be in addition to any indemnity liability imposed by the contract documents, and shall survive the completion of the work or the termination of the Agreement.

Duanesburg agrees to indemnify, defend and hold harmless Delanson, its officers, agents and employees from and against all lawsuits, claims, causes of action, costs, expenses, damages, liabilities, including reasonable attorney's fees, which Delanson may incur as a result of injury to persons or damage to property to the extent that such claims arise out of the services Duanesburg performs pursuant to this Agreement, but only to the extent attributable to the negligence or willful misconduct of Duanesburg or any entity for which it is legally responsible or vicariously liable.

Insurance

15. The following insurance requirements shall apply to Delanson:

Commercial General Liability (CGL)

- a) Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products - completed operations aggregate. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations,

personal and advertising injury and liability assumed under an insured contract.

- b) Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained by contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the subcontractor, the sub-subcontractor or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. Additional Insured products and completed operations coverage maintained for 3 years after completion of the work.

Automobile Liability

- a) Business Automobile Liability with a combined single limit of not less than \$ 1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.
- b) Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

Umbrella/Excess Liability

- a) Umbrella / Excess Liability with limits not less than \$ 5,000,000 per occurrence /aggregate.
- b) Umbrella Liability must include as Additional Insured all entities that are Additional Insured on the CGL and Automobile Liability policies.
- c) Umbrella/Excess Liability shall apply on a primary and not contributory basis.

Workers Compensation and Employers Liability

- a) Employers Liability Insurance with limits not less than \$ 1,000,000 Each Accident for bodily injury by an accident \$ 1,000,000 Each Employee for injury by disease
- b) Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is optional

under the workers compensation act.

All insurance required must be with insurers licensed to conduct business in New York State and reasonably acceptable to the Duanesburg and all other parties as required by contract. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.

Authority for Execution

16. The Duanesburg Supervisor and, the Delanson Mayor have executed this Agreement and, by resolution, each has been duly authorized and empowered to do so, This Agreement shall be executed in triplicate, and at least one copy shall be permanently filed, after execution thereof, in the Office of the Duanesburg Town Clerk.

No Waiver

17. The failure by any Party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent upon a breach of the same, shall not constitute a waiver of any such breach or of such, or any other, covenant, agreement, term or condition. By notice duly given, any Party may, but shall be under no obligation to, waive any of its rights or any conditions of its obligations under this Agreement, or any duty, obligation or covenant of any other Party. No such waiver shall affect or alter the remainder of this Agreement, but each and every covenant, duty, agreement and condition of this Agreement shall continue in full force and effect with respect to any other then existing, or subsequent, breach.

Modification

18. No provision hereof shall be modified, amended, waived or limited except by a written agreement expressly referring hereto and to the provision so modified, amended, waived or limited and signed by both parties to this Agreement.

Severability

19. Any provisions of applicable law which supersede or invalidate any provision of this Agreement shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be enforced as if such superseded or invalid provision(s) were deleted.

Contingency

20. The obligations of Duanesburg under this Agreement are expressly subject to the Duanesburg's employment of a qualified building inspector.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Town of Duanesburg and the Village of Delanson have caused their seals to be affixed hereto and have caused this Agreement to be duly executed.

Date:

William Wenzel
Duanesburg Town Supervisor

Date:

Delanson Village Mayor

**Town of Duanesburg
Intermunicipal Agreement
Between the Town of Duanesburg and the Town of Princetown**

CONTRACT for services by and between the Town of Duanesburg, New York and the Town of Princetown, New York.

IT IS HEREBY AGREED that, for the consideration hereinafter set forth, the Town of Duanesburg, through its Highway Department, will perform snow plowing services, as conditions require, that portion of Van Patten Road that lies within the Town of Princetown, Schenectady County, New York for a term of one year January 1, 2023 until December 31, 2023.

The Town of Duanesburg will furnish Certificates of Insurance showing coverage for liability to third persons and Workers' Compensation for its employees and further hereby agrees to hold the Town of Princetown harmless for any claims arising out of the actions or failure to act by the Town of Duanesburg.

The following insurance requirements shall apply to the Town of Duanesburg:

Commercial General Liability (CGL)

(a) Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products – completed operations aggregate.

Automobile Liability

(a) Business Automobile Liability with a combined single limit of not less than \$ 1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

Workers Compensation and Employers Liability

(a) Employers Liability Insurance with limits not less than \$ 1,000,000 Each Accident for bodily injury by an accident \$ 1,000,000 Each Employee for injury by disease.

(b) Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is optional under the workers compensation act.

To the fullest extent permitted by law, the Town of Princetown shall indemnify, defend, and hold harmless the Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits or other liabilities, (including all costs reasonable attorneys' fees, consequential damages, and punitive damages) arising out of or resulting from, or alleged to arise out of or arise from, the performance of work under the Agreement, and any work order, whether such claim, damage, demand, loss of expense is attributable to bodily injury, personal

injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent attributable to the negligence or willful misconduct of the Town of Princetown or any entity for which it is legally: regardless of whether the claim is presented by the Town of Princetown's employee, his/her spouse, legal or domestic partner under applicable state law and/or dependents of the Town of Princetown's employee. Such indemnity obligation shall not be in derogation or limitation of any other obligation or liability of the Town of Princetown or the rights of the Town of Duanesburg. This indemnification shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Town of Princetown under any workers compensation acts, disability benefits acts or other employees benefits acts and includes any loss or injury suffered by an employee of the Town of Princetown or any others who claim to have directly or derivatively sustained injury or damages due to the injury to the Town of Princetown's employee. This indemnification shall be in addition to any indemnity liability imposed by the contract documents, and shall survive the completion of the work or the termination of the Agreement.

The following insurance requirements shall apply to the Town of Princetown:

Commercial General Liability (CGL)

(a) Commercial General Liability with limits not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products - completed operations aggregate. General Aggregate must apply on a per project basis. Such insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal and advertising injury and liability assumed under an insured contract.

The Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured for ongoing operations and completed operations. Additional Insured coverage shall apply on a primary and not contributory basis, including any deductible, maintained by, or provided to, the Additional Insured. It is expressly understood by the parties to this contract that it is the intent of the parties that any insurance obtained by contractor is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by the subcontractor, the sub-subcontractor or any of their respective consultants, officers, agents, subcontractors, employees anyone directly or indirectly employed by them or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law. Additional Insured products and completed operations coverage maintained for 3 years after completion of the work.

Automobile Liability

(a) Business Automobile Liability with a combined single limit of not less than \$ 1,000,000 limit per accident, including owned, non-owned, leased and hired vehicles, as well as liability coverage for mobile equipment subject to compulsory insurance or financial responsibility laws or other motor vehicle insurance laws.

(b) The Town of Duanesburg along with their respective officers, agents and employees and all other parties required of the contract shall be named as Additional Insured on a primary and not contributory basis.

Umbrella/Excess Liability

- (a) Umbrella / Excess Liability with limits not less than \$ 10,000,000 per occurrence / aggregate.
- (b) Umbrella Liability must include as Additional Insured all entities that are Additional Insured on the CGL and Automobile Liability policies.
- (c) Umbrella/Excess Liability shall apply on a primary and not contributory basis.

Workers Compensation and Employers Liability

- (a) Employers Liability Insurance with limits not less than \$ 1,000,000 Each Accident for bodily injury by an accident \$ 1,000,000 Each Employee for injury by disease
- (b) Coverage for all employees, and if on the job site, including corporate officers, and sole proprietors, partners of a partnership, members of a limited liability company, whether or not such coverage is optional under the workers compensation act.

All insurance required must be with insurers licensed to conduct business in New York State and reasonably acceptable to the Town Of Duanesburg and all other parties as required by contract. All insurance shall be from an insurer with A.M. Best rating form A- to A+ or better.

In consideration of the above, the Town of Princetown shall pay the Town of Duanesburg the sum of one thousand two hundred dollars (**\$1,200.00**) for services provided in 2023.

[Signature Page Follows]

TOWN OF DUANESBURG:

William Wenzel, Town Supervisor

Highway Superintendent

TOWN OF PRINCETOWN:

, Town Supervisor

Highway Superintendent

I, _____, Town Clerk for the Town of Princetown, hereby certify that, by Resolution # _____, duly passed at a regular meeting of the Town Board on the _____ day of _____ 2023, the Superintendent of Highways was authorized to enter into the contract with the Town of Duanesburg to which this certificate is attached.

Town Clerk

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. _____-2022

December 30, 2022

WHEREAS, the Town of Duanesburg Building Inspector is in the process of changing his status and the Town Board has taken the necessary steps to have the job description of Building Inspector approved by Schenectady County Civil Service (see attached job description and minutes of the County meeting);

WHEREAS, the Town advertised that the position was open and obtained resumes from persons interested in becoming the Town Building Inspector and any qualified candidates have been interviewed;

WHEREAS, the Town Supervisor and other members of the Town Board have determined that Christopher Parslow is qualified for the position and can obtain all of the required NYSDOL training and take the necessary Civil Service Test within the next 90 days;

WHEREAS, the yearly salary for the position based on the candidate's qualifications shall be \$55,000 and his employment will start on January 3, 2023.

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby provisionally appoints Christopher Parslow as Town Building Inspector at an annual salary of \$55,000, subject to his taking and passing the Civil Service Examination for the Position of Town Building Inspector upon its first offering, as well as his obtaining, within the 90 days, all of the training required by the NYS Secretary of State Department of Codes for Building Inspectors.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its meeting on December 30, 2022.

William Wenzel, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Town Board Members:

Dianne Grant	Yea	Nay	Abstain
Michael Santulli	Yea	Nay	Abstain
Rick Potter	Yea	Nay	Abstain
William Wenzel	Yea	Nay	Abstain
Andrew Lucks	Yea	Nay	Abstain

TOWN OF DUANESBURG TOWN BOARD

RESOLUTION NO. _____-2022

December 30, 2022

WHEREAS, the long-time Town of Duanesburg Town Building Inspector, Dale Warner, has requested that the Town Board change his employment status to part-time, two days a week as assistant to the Building Department;

WHEREAS, Mr. Warner has assisted the Town in interviewing and in evaluating a new Town of Duanesburg Building Inspector, who has been provisionally appointed, and Mr. Warner will help ensure a smooth transition;

WHEREAS, the Town Board has determined that such a change in employment will be helpful to the Town and in the public interest particularly given the need for the new Building Inspector to obtain all of the required NYSDOL training and to take and pass the necessary Civil Service Exam;

WHEREAS, the yearly salary for this change in employment status to Assistant Building Inspector shall be \$30,000 and Mr. Warner’s change in employment will start on January 3, 2023.

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby appoints Dale Warner Assistant Town Building Inspector at an annual salary of \$30,000, for working no more than two days a week.

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its special meeting on December 30, 2022.

William Wenzel, Supervisor

Town Clerk/Deputy Town Clerk

Present:

Absent:

Town Board Members:

Dianne Grant	Yea	Nay	Abstain
Michael Santulli	Yea	Nay	Abstain
Rick Potter	Yea	Nay	Abstain
William Wenzel	Yea	Nay	Abstain
Andrew Lucks	Yea	Nay	Abstain