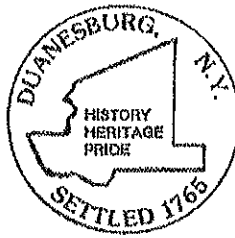


**William Wenzel**, Town Supervisor  
**Jennifer Howe**, Town Clerk  
**Carol Sowycz**, Deputy Town Clerk  
**William Reed**, Highway Superintendent



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

**Thursday December 28, 2023**  
**Regular Town Board Meeting**  
**Meeting Time: 7:00PM**

**Meeting called to order by Supervisor Wenzel at 7:00PM**

**Present:** Supervisor Wenzel, Council Members Lucks, Grant, Santulli, and Potter, Town Clerk Jennifer Howe, Town Attorney Randall Beach in Terresa Bakner's absence

**Call to Order**  
**Pledge of Allegiance**  
**Prayer/Moment of Reflection**

**Resolution 156-23:** Council Member Grant motioned, seconded by Council Member Potter to approve the December 14, 2023, Town Board Meeting minutes.  
Motioned carried, 4 ayes

**Town Clerk, Jennifer Howe read the Town Clerk's Report for November 2023 (Please see attached).**

**Supervisor, William Wenzel read the Supervisor's Report for November 2023 (Please see attached).**

**Resolution 157-23:** Council Member Lucks motioned, seconded by Council Member Grant to pay the attached Payment of Claims (Please see attached).  
Motion carried, 4 ayes.

**Highway:** Supervisor Wenzel reported that the guys have been out a couple times for ice on the road.

**Public Safety:** Council Member Grant said she didn't have anything to report.

**Parks:** Nothing to report.

**Sewer District #1, 2 & 3:** Nothing to report.

**Technology:** Council Member Santulli stated that they have a meeting next week.

**Business Meeting:**

**Resolution 158-23:** Council Member Santulli motioned, seconded by Council Member Potter to approve and authorize the Town Supervisor to execute the 2024 agreements with Omnis, Civic Plus pending the attorney approval of submission of contract, H2H, Montgomery County SPCA, DVC, Village of Delanson and Town of Princetown.

Motion carried, 4 ayes

**Resolution 159-23:** Council Member Grant motioned, seconded by Council Member Potter to set a public hearing for the purpose of the town contracting for fire protection services within the Town of Duanesburg.

Motion carried, 4 ayes

**Resolution 160-23:** Council Member Potter motioned, seconded by Council Member Grant to set the Organizational Meeting for January 2, 2024, at 9:00am.

Motion carried, 4 ayes

**Privilege of the Floor:**

Council Member Grant motioned, seconded by Council Member Potter to adjourn. 7:19 pm

I, Jennifer Howe, Town Clerk of the Town of Duanesburg, hereby certify that this is a true and accurate transcript of the Regular Town Board Meeting held on Thursday December 28, 2023.





Account#	Account Description	Fee Description	Qty	Local Share
		Septic Permit	1	75.00
		Temporay CO	1	50.00
	Misc. Fees	Certified Copies - Death	2	20.00
		Certified Copies - Marriage	1	10.00
		Photo Copies	10	1.50
	Planning & Zoning Fees	Planning & Zoning Fees	3	375.00
	septic repair	septic repair	1	50.00
		<b>Sub-Total:</b>		<b>\$581.50</b>
690.01	Village Of Delanson	Village Of Delanson	1	50.00
		<b>Sub-Total:</b>		<b>\$50.00</b>
A1255	Conservation	Conservation	9	31.36
		<b>Sub-Total:</b>		<b>\$31.36</b>
A2544	AFTER 30 DAYS	AFTER 30 DAYS	2	10.00
	Dog Licensing	Female, Spayed	15	210.00
		Female, Unspayed	1	22.00
		Male, Neutered	18	252.00
		Male, Unneutered	4	88.00
		<b>Sub-Total:</b>		<b>\$582.00</b>
E 15	Building Permits	Building Permits	9	1,875.00
	Other Permits	Other Permits	1	25.00
	Sign Permits	Sign Permits	1	35.00
		<b>Sub-Total:</b>		<b>\$1,935.00</b>
		<b>Total Local Shares Remitted:</b>		<b>\$3,179.86</b>
Amount paid to: NYS Ag. & Markets for spay/neuter program				48.00
Amount paid to: NYS Environmental Conservation				537.64
<b>Total State, County &amp; Local Revenues:</b>		<b>\$3,765.50</b>	<b>Total Non-Local Revenues:</b>	<b>\$585.64</b>

To the Supervisor:

Pursuant to Section 27, Sub 1, of the Town Law, I hereby certify that the foregoing is a full and true statement of all fees and monies received by me, Jennifer Howe, Town Clerk, Town of Duanesburg during the period stated above, in connection with my office, excepting only such fees and monies, the application of which are otherwise provided for by law.

Supervisor

Date

Town Clerk

Date

# Monthly Statement of the Town Supervisor

TO THE TOWN BOARD OF THE TOWN OF DUANESBURG, NEW YORK

Pursuant to Section 119 of Town Law, I hereby render the following statement of all money received and disbursed by this office during the month of NOVEMBER 2023

## Revenues

Fund	Amount
General Fund	\$61,764.28
Highway Fund	\$1,037.55
Drainage	\$0.00
Fire District	\$0.00
Lighting District #1	\$0.00
Lighting District #2	\$0.00
Lighting District #3	\$0.00
Sewer District #1	\$6.57
Sewer District #2	\$406.82
Sewer District #3	\$11.99
<b>Total</b>	<b><u>\$ 63,227.21</u></b>

## Disbursements

General Fund	\$195,022.77
Highway Fund	\$38,211.05
Fire District	\$0.00
Lighting District #1	\$593.25
Lighting District #2	\$1,176.99
Lighting District #3	\$570.57
Sewer District #1	\$18,193.62
Sewer District #2	\$23,831.15
Sewer District #3	\$5,735.17
<b>Total</b>	<b><u>\$ 283,334.57</u></b>

**TOWN OF DUANESBURG**  
**CASH REQUIREMENTS PER FUND**  
**12/28/23**

<b>FUND</b>		<b>AMOUNT</b>
General Fund A		10,302.01
General OV B		1,928.39
Highway Fund DA		7,491.61
Highway OV-DB		4,904.66
Lighting District #1		96.92
Lighting District #2		107.90
Lighting District #3		72.85
Planning Board		37.40
Sewer District #1		10,760.28
Sewer District #2		2,531.57
Sewer District #3		3,805.53
Trust & Agency		285.45
		-
	<b>TOTAL TRANSFERS TO AP</b>	<b>42,324.57</b>

**TOWN OF DUANESBURG TOWN BOARD**

**RESOLUTION ~~158~~-23**

**December 28, 2023**

**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, Montgomery County SPCA for provided shelter for dogs at large, Duanesburg Volunteer Corps ("DAC"), 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

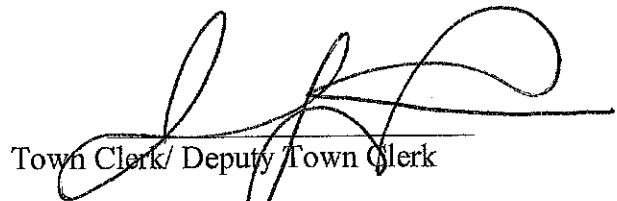
**WHEREAS**, the Town Board has carefully reviewed the Agreements, including the changes to the Agreements since they were distributed at the December 14, 2023 meeting of the Town Board; and

**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 28, 2023.



William Wenzel, Supervisor



Town Clerk/ Deputy Town Clerk

Present: Council members Grant, Potter & Santulli, Supervisor Wenzel

Absent: Council member Lucks

**Council Members:**

William Wenzel	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Dianne Grant	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Andrew Lucks	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain Absent
Francis Potter	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Michael Santulli	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain

\* Amended to approving contract w/ Civic Plus pending the attorney approval of submission of contract.





### MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT ("Agreement") is made this 1<sup>st</sup> day of January 2024 ("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/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 a month

\* Microsoft Office 365 Billed Separately \*

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

19 workstations @ \$30 each a month

Managed backup @ \$125 a month

**Total per month \$872.50**

Phone: (518) 372-7829  
Fax: (518) 372-3189  
e-mail: scott@omnis1.com

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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.

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## 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

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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.

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**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.

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(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

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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) 372-7829  
Fax: (518) 372-3189  
e-mail: scott@omnis1.com

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Omni's Computer's professional liability insurance coverage amounts in accordance with this Agreement



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Reprographics

*Omnis Computer's professional liability insurance coverage limits 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) 372-7829  
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e-mail: scott@omnis1.com

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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.**

22.1. **Commercial Property Insurance.** *Reserved.* 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 CLIENT'S 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) 372-7829  
Fax: (518) 372-3189  
e-mail: scott@omnis1.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) 372-7829  
Fax: (518) 372-3189  
e-mail: scott@omnis1.com

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Client- Town of Duquesburg

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

Date: \_\_\_\_\_

*[Handwritten signature]*  
*1/2/2024*

OMNIS COMPUTERS – Omnis Computers & Supplies, Inc.

DocuSigned by:

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

*Omnis Computer & Supplies, Inc.*  
838860C792A6460...

Date: \_\_\_\_\_

12/12/2023

Phone: (518) 372-7829  
Fax: (518) 372-3189  
e-mail: scott@omnis1.com

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## **AGREEMENT FOR THE PERFORMANCE OF PROFESSIONAL SERVICES**

Effective Date of Agreement: 1/01/2024

Consultant: **H2H Geoscience Engineering PLLC**

Client: **Town of Duanesburg**

Project: **Landfill Monitoring for 2024**

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 1). 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.

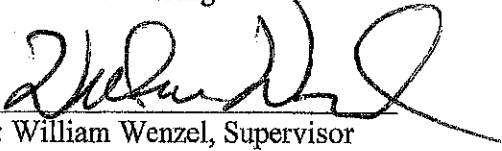
[Signature Page Follows]

IN WITNESS WHEREOF, the parties here have caused this Agreement to be duly executed  
the \_\_\_\_ day of December, 2023, 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 — Certificate of Insurance



## **ATTACHMENT 1- BASIC SERVICES**



December 6, 2023

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

*via email: wwenzel@duanesburg.net*

**Re: Landfill Monitoring and Inspection Proposal for 2024  
Town of Duanesburg Landfill (Closed) – Depot Road**

Dear William:

We are pleased to submit this Proposal to continue to provide quarterly landfill inspections and annual groundwater monitoring into 2024 for the above referenced Project. Upon verbal or written direction to proceed with performance of the services described herein, this Proposal, along with all attachments thereto, will constitute a binding agreement (the "Agreement") between Bowman Consulting Group, Ltd. ("Bowman") and the Town of Duanesburg (the "Client").

#### **PROPOSAL ASSUMPTIONS AND PROJECT UNDERSTANDING**

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It is our understanding that Bowman will provide environmental services for the Town of Duanesburg Landfill on Depot Road according to the most recently revised sampling protocols provided by the Region 4 New York State Department of Environmental Conservation. This will include annual sampling for baseline parameters in the monitoring wells 1-4 and the seep. Annual sampling for expanded parameters will be conducted for the eastern and western leachate tanks. Water level measurements will be taken annually for the monitoring wells 1-4 and eastern and western leachate tanks. Physical inspections of the landfill conditions will be conducted quarterly. Reporting will be submitted by H2H to NYSDEC and the Client. Hard copies will be provided to the Client and only to the agency if requested.

Standard of Care - Services provided by Bowman under this proposal will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession practicing under similar circumstances, including standard of care at the time the services were provided.

Quality Control - A portion of the stated compensation is set-aside for Quality Control/Quality Assurance, which is part of the Bowman Quality Control Policy.

#### **SCOPE OF SERVICES AND FEES**

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The cost estimate to complete the environmental monitoring and reporting for the Town of Duanesburg Landfill on Depot Road is **\$17,000.00**. This includes all laboratory analysis costs. If this proposal is acceptable, we will plan the 2024 services for the landfill inspection to commence the First Quarter 2024. Annual baseline sampling will be conducted during the Fourth Quarter 2024, as it is rotated to encompass all environmental conditions.



## **REIMBURSABLE EXPENSES**

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Reimbursable expenses shall include actual expenditures made by Bowman in the interest of the Project and will be invoiced at the actual cost to Bowman plus fifteen percent (15%) for handling and indirect costs. Reimbursable expenses shall include but not be limited to costs of the following:

- Mailing, shipping, and out-source delivery (i.e. DHL, FedEx) costs
- Fees and expenses of special consultants as authorized by the Client

## **OTHER TERMS**

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This proposal is based on the scope of services indicated herein and the information available at the time of the proposal preparation. If any additional services are required due to unforeseen circumstances and/or conditions, Client or regulatory requested revisions, additional meetings, regulatory changes, etc., Bowman will notify the Client that additional scope of work and fees are required and will obtain the Client's written approval prior to proceeding with any additional work.

Please indicate your acceptance of this proposal by executing below and returning a copy to me via email. Thank you for the opportunity to continue to provide services to the Town of Duanesburg.

Respectfully,

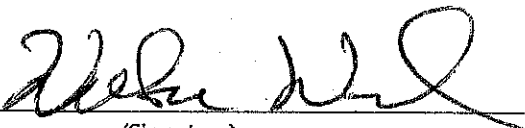
A handwritten signature in black ink, appearing to read 'Olya Rizzo'.

Olya Rizzo  
Environmental Scientist 2

C. Dale Warner, Town of Duanesburg  
Richard Hisert, H2H, a Bowman Company



hereby accepts all terms and conditions of this Proposal (including the Standard Terms and Conditions) and authorizes Bowman to proceed with the Project.

  
(Signature)  
Printed Name: WILLIAM MENZEL  
Title: DUANESBURGH TOWN SUPERVISOR Date: 1/2/2024

**Exhibit 1**  
**Certificate of Insurance**

Montgomery County Society for the Prevention of Cruelty to Animals and  
The Town of Duanesburg  
Dog Shelter Service Agreement  
January 1, 2024 to December 31, 2025

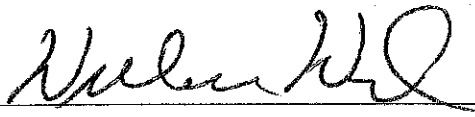
**THIS AGREEMENT** is made pursuant to the provisions of Article 7 of the Agriculture and Markets Law for the State of New York, by and between the Town of Duanesburg, a municipal corporation in the State of New York hereinafter referred to as "Town" and the Montgomery County Society for the Prevention of Cruelty to Animals, Inc., herein after referred to as the "MCSPCA", a not-for-profit corporation, created and existing under and by virtue of the laws of the State of New York and having its office and principal place of business located at SPCA Road in the Town of Florida, County of Montgomery and the State of New York.

1. The MCSPCA will provide and maintain a shelter, food and water for all dogs, taken into custody by the Town's Animal Control Officer under any provision of Article 7 of the Agriculture and Market Laws or any Town Ordinance and properly care for such dogs until as provided in the above State Law they are redeemed, adopted, or subject to euthanasia.
2. The Town shall be responsible for the costs of necessary medical treatment by a veterinarian of any animal during the mandatory statutory holding period of five (5) days for licensed and unlicensed dogs. After the five days the MCSPCA will take custody of the animal.
3. The MCSPCA shelter shall at all times during the period of this agreement be under the care and charge of a competent employee and shall be open to the public at reasonable hours:  
Monday and Tuesday: Closed  
Wednesday through Sunday: 12:00 PM to 4:00 PM  
Legal holidays, emergencies, cruelty, and neglect investigations excluded.
4. The MCSPCA shelter shall be accessible to the Town's Animal Control Officer on a twenty-four (24) hour basis. During the hours when the shelter is not open to the public, it shall be accessible only for the purpose of leaving animals at the shelter. It shall be the responsibility of the MCSPCA to ensure that at least one (1) temporary holding kennel is available at the close of each business day.
5. The MCSPCA shall make every effort to ensure that space is available for animals brought to the MCSPCA by the Town. Should the MCSPCA be unable to provide housing due to contagious disease or overpopulation, the MCSPCA shall not be responsible to reimburse the Town for expenses associated with finding alternate housing facilities. It shall be the responsibility of the MCSPCA to notify the Town when there is no available shelter space. The MCSPCA will then notify the Town of the first available space so that the dog can be relocated to the MCSPCA as soon as possible.
6. The MCSPCA will assist all police agencies in the investigation of alleged cases of animal cruelty occurring in the Town when those cases are reported to its duly appointed agents by written complaints, signed by those making the complaint.
7. The MCSPCA will follow the provisions of Article 7 of the Agriculture and Market Laws and any rules and regulations promulgated pursuant thereto in relation to the seizure, holding, care, redemption, and disposition of seized dogs.
8. The MCSPCA will file and maintain a complete record of any seizure and subsequent disposition of any dog in the shelter's care in the manner prescribed by the Commissioner of Agriculture and Market, as well as any other record required by Article 7.

9. The MCSPCA will remit to the Fiscal Officer of the Town any fees collected by it in the performance of this contract to which the Town is entitled pursuant to Article 7 of the Agriculture and Market Laws. Without limiting the foregoing, the MCSPCA will collect a redemption fee of \$65.00 per day from each dog owner that redeems a dog from the MCSPCA and shall remit such redemption fees to the Town's Fiscal Officer.
10. The MCSPCA will provide and maintain a shelter for any dog deemed dangerous by the municipal judge or justice and taken into custody by the Town's Animal Control Officer or Town's Law Enforcement under any provision of Article 7 of the Agriculture and Market Laws Section 123 or any Town Ordinance. The MCSPCA shall properly care for such dogs until the dog is removed from the MCSPCA's premises by the Town's Animal Control Officer or the Town's Law Enforcement. The Town shall be responsible for necessary medical care and transportation of dangerous dogs to a veterinarian for treatment during the holding period. The Town of Duanesburg will be charged the amount of fifty (50) dollars per day for each dog deemed dangerous at the MCSPCA.
11. The MCSPCA will provide and maintain a shelter for any dog required to be quarantined for a 10-Day Bite Hold. The MCSPCA shall properly care for such dogs until the dog is removed from the MCSPCA's premises by the Town's Animal Control Officer or Law Enforcement. The Town will be charged the amount of forty (40) dollars per day for each dog held on a 10-Day Bite Hold at the MCSPCA. The fee will increase to \$50 a day for a dog deemed dangerous.
12. The Town in consideration of the performance by the MCSPCA of the terms of this agreement hereby agrees to pay the MCSPCA the sum of Four Hundred (400) dollars per euthanasia and cremation of each dog plus Four Thousand and Seven Hundred Dollars (\$4,700.00) per year in four (4) quarterly installments to be paid as follows:
  - \$1,175.00 by March 1, 2024 and March 1, 2024
  - \$1,175.00 by June 1, 2024 and June 1, 2024
  - \$1,175.00 by September 1, 2024 and September 1, 2025
  - \$1,175.00 by December 1, 2024 and December 1, 2025
13. The terms of this agreement shall commence on January 1, 2024, and end on December 31, 2025, for a period of twenty-four (24) months.
14. Either party to this agreement may terminate this agreement in full by providing a written notice of such termination at least sixty (60) days prior to the termination date. Both parties to this agreement also agree that modifications may be made at any time by written agreement of both parties.
15. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach.
16. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of the Agreement or the remainder of such section. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to the fullest extent of the law.
17. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws.

The undersigned parties to this agreement hereby acknowledge their approval of this agreement.

TOWN OF DUANESBURG

BY:  DATE: 1/2/2024

MONTGOMERY COUNTY SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS,  
INC.

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Maureen Rossi, President of the Board of Directors



**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 and effective as of the 1st day of January, 2024, between the **TOWN OF DUANESBURG**, 5853 Western Turnpike, Duanesburg, NY 12056 (the "Town") and **DUANESBURG VOLUNTEER AMBULANCE CORPS, INC.** doing business as **DUANESBURG AMBULANCE ("DA")**, 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**, DA is desirous of furnishing BLS 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 (2023), the Town duly authorized this Agreement with DA upon the terms and conditions set forth herein; and

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

**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 DA to furnish primary response Ambulance Services for the entire Town of Duanesburg, and DA agrees to furnish such Ambulance Services, subject to the following provisions:

**1. TERM**

This Agreement shall be effective January 1, 2024 until December 31, 2024 (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 DA**

DA will:

- 3.1 Provide Ambulance Services within the Town. DA 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 Trauma Systems, the State Emergency Medical Advisory Committee, the Hudson Mohawk Regional Emergency Medical Services Council and Hudson Mohawk Regional Emergency Medical Advisory Committee for the operation of such Ambulance Services. DA 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 DA 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 DA'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 DA facilities;
  - All liability, contractual liability, malpractice, workers compensation, contractual and/or errors and omissions insurance covering all members of DA; 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 DA 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 the time of submission of the second quarter report outlined in Addendum B of each year of the Term, provide the Town with an inventory of all property and equipment owned by or in the custody of DA 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 the time of submission of the second quarter report outlined in Addendum B of each year of the Term provide to the Town a listing of all cash assets of DA, 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, DA 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 DA shall provide the Town with the accounting and reporting of calls, fees collected, and other matters as outlined in Addendum B.
- 3.11 On an annual basis no later than September 1st of each year of the Term, DA 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 DA corporate or internal conditions precedent to the execution of this Agreement have been satisfied or ratified by DA and that the signatory of this Agreement on behalf of DA 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 DA successfully and fully providing the Ambulance Services for the Term, DA shall be compensated in the amount of up to **\$786,847.00** (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 DA pursuant to Section 5 (the "Fees Collected Portion"). For the Town Payment Portion, the Town shall pay **\$537,160.00** on an annual basis, to DA in quarterly payments in the amount of \$134,290.00, payable on the first working 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 DA pursuant to Section 5. Should the amount of fees collected by DA during the Term(\$249,687.00), plus the Town Payment Portion (\$537,160.00), exceed the Contract Fee, the excess amount shall be remitted to the Town. If the amount of fees collected by DA during the Term, plus the Town Payment Portion, is less than the Contract Fee, such shortfall shall be borne by DA. The Town is hereby relieved from the obligation to pay DA more than the Town Payment Portion of **\$537,160.00**.

The Contract Fee represents the present financial commitment made by Town to DA plus additional monies required to ensure 24-hour, 7-days-per-week ambulance service coverage of the Town.

- 4.2 The Town shall only be responsible to DA 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 DA, the Town may plow, sand, salt and/or de-ice DA facilities so as to enable DA 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, DA 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 DA will seek fee collection from all persons utilizing the Ambulance Services.
- 5.2 DA, 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 DA and subtracted from those sums received from third parties for service, including any additional costs to DA for providing billing services attributable to ALS billing. DA 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 DA 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 DA designated representative will review and present to the Town Supervisor a proposed budget for the following year. In addition, a designated DA 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 Third party revenue collected by a professional ambulance billing company on behalf of DA, will be deposited in a federally insured bank account. A separate bank account held in a federally insured bank account will be established for the sole purposes of paying all invoices associated for the management of DA physical property, all equipment, and all supplies as outlined in the approved calendar years budget approved by the Duanesburg's Town Board. 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 DA 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 DA representative will present to the TOWN Board in accordance with Addendum B.
- 7.2.1 DA will provide the Town with reports prepared by DA 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 DA will provide the Town with copies of operational bank statements (with balances) and account reconciliations for the collection funds designated in Section 7.1 of this Agreement.
- 7.2.3 During the quarterly review, DA will provide to the Town Board the applicable data for that quarter 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 DA will provide the Town a copy of DA's (current) filed IRS Form 990 each year during the term of this Agreement. In the event that DA obtains an extension from the IRS to file its Form 990 beyond May 1, DA will provide a copy of said Form 990 to the Town as soon as possible after filing.
- 7.4 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 DA is obligated to disclose a patient's identity or other protected health information as governed by HIPAA or other governmental statute, rule or regulation.

- 7.5 Donations made to DA 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 Section 4.1.

## **8. INDEMNITY**

To the fullest extent permitted by law, DA 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 DA's operations, actions, or obligations under the Agreement. To the fullest extent permitted by law, the Town will indemnify and hold harmless DA 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 DA 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. DA 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 DA's obligation to provide evidence of such insurance coverages.



- 9.6 All liability insurance policies procured and maintained by DA protecting against claims arising out of the operations, actions, or obligations of DA in providing Ambulance Services or related services arising directly or indirectly therefrom shall name the Town as an additional insured.
- 9.7 DA 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 DA personnel above any amounts paid to DA 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 DA. If, upon the effective date of termination, the Town owes DA payment for Ambulance Services rendered through date of termination, such payment will be made by the Town to DA 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, DA 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 DA:

Chairperson  
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**

DA is a vendor to the Town. DA 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**

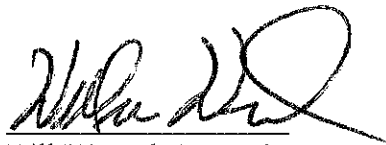
16.1 This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained herein, and merges and supersedes all prior discussions, agreements and understandings of every kind and nature among them. No party shall be bound by any condition, definition or representation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

By:



Bill Wenzel, Supervisor

**DUANESBURG AMBULANCE**

By:

Robert Cuttita, Chairman of DA

**ADDENDUM A – SCHEDULE OF FEES**  
**January 1, 2024 through December 31, 2024**

**ALS CHARGES**

ALS TRANSPORT LEVEL 1	\$ 1408.17
ALS TRASPORT LEVEL 2	\$ 1510.13

**BLS CHARGES**

BLS REFUSAL	\$ 148.72
BLS EMERGENCY	\$ 995.19
BLS NON-EMERGENCY TRANSPORT	\$ 826.90
MILEAGE (per mile)	\$ .655 federal milage rate

**ADDENDUM B SCHEDULE FOR QUARTERLY REPORTING**  
**January 1, 2024 through December 31, 2024**

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 DA 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 to include an inventory of property and equipment valued over \$2,000.00	Present to the Town Board, by a DA 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 DA 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, DA 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 DA representative during the month of January for the preceding contract year

**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, 2024 until December 31, 2024.

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

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

This Agreement entered into on December \_\_\_, 2023 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, 2024.

**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, 2024 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, 2024 until December 31, 2024. 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**

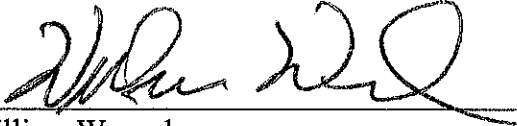
18. Any provisions of applicable law which supersede or invalidate any provision of this Agreement shall not affect the validity of the remainder of this Agreement, and such remaining provisions shall be enforced as if such superseded or invalid provision(s) were deleted.

**[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: 4/2/24

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 \_\_\_\_, 2023 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, 2024 until December 31, 2024. 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, 2024.
  - 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**

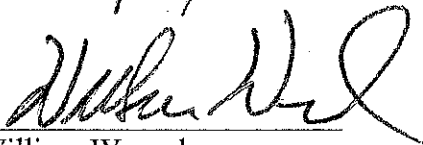
20. The obligations of Duanesburg under this Agreement are expressly subject to the Duanesburg's employment of a qualified building inspector.

[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:

1/2/2024



William Wenzel  
Duanesburg Town Supervisor

Date:

\_\_\_\_\_  
Delanson Village Mayor

**TOWN OF DUANESBURG TOWN BOARD**

**RESOLUTION ~~59~~-23**

**December 28, 2023**

**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**, the Town currently contracts for fire protection services and certain emergency services with Mariaville Volunteer Fire Department, Inc. in Fire Protection District No. 2, the Burtonsville Volunteer Fire Department in Fire Protection District No. 3, the Village of Delanson in Fire Protection District No. 3, and the Village of Esperance in Fire Protection District No. 3 (the "Fire Protection Contracts"); and

**WHEREAS**, pursuant to Town Law § 184(8), by mutual consent of the contracting parties, and after a public hearing or hearings held pursuant to public notice, the Fire Protection Contracts may be approved, if the Town Board, after such hearings, shall determine, by resolution, that it is in the public interest to do so; and

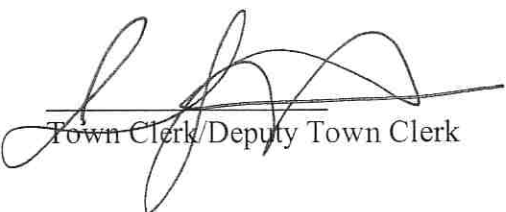
**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board shall meet and hold public hearings on January 11, 2024 commencing at 7 p.m. at the Town Hall, 5853 Western Turnpike, Duanesburg, New York, to hear all persons interested in the subject concerning amending the Fire Protection Contracts; and

**BE IT FURTHER RESOLVED**, The Town Board directs that Town Clerk to publish the Notice of Public Hearings, attached hereto, in the Schenectady Daily Gazette to appear once not less than ten (10) days before the date of the public hearing and the Town Clerk is also directed to cause a copy thereof to be posted on the sign board of the Town of Duanesburg, and the Town of Duanesburg website, not less than ten (10) days before January 11, 2023; and

**BE IT FURTHER RESOLVED**, pursuant to Town Law § 184(1-a)(b), the Town waives, in whole, the requirement that the parties providing fire services file any statement required by Town Law §184(1-a)(a).

By (unanimous/majority) vote of the Town Board of the Town of Duanesburg at its regular meeting on December 28, 2023.

  
William Wenzel, Supervisor

  
Town Clerk/Deputy Town Clerk

Present: Council members Grant, Potter & Santulli, Supervisor Wenzel

Absent: Council member Lucas

Town Board Members:

William Wenzel	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Michael Santulli	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Rick Potter	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain
Andrew Lucks	<input type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain Absent
Dianne Grant	<input checked="" type="radio"/> Yea	<input type="radio"/> Nay	<input type="radio"/> Abstain

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

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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 **Thursday, January 11, 2024** at 7:00 p.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 29, 2023

