

Marcellus Town Board
Regular Meeting
Wednesday, February 2, 2022
6:30 pm

Call to Order

Salute to Flag

I. **Waive the Reading & Accept the Minutes**

II. **Approve Monthly Activity**

III. **OLD BUSINESS**

A. Double Utility Poles

IV. **NEW BUSINESS**

A. Interim agreement for Assessor

B. Teal There's a Cure Request – Park

C. OCM BOCES Contract for Professional Services

D. Concert in the Park – John Rogalia and the Swamp Boys

The Horn Dogs

Thunder Canyon

Faded Vinyl

The Strangers

E. Fire Department - Contract

V. **COMPREHENSIVE PLAN**

VI. **TOWN HALL**

VII. **DISCUSSION AGENDA**

VIII. **ADJOURNMENT**

Future Meeting Dates:

Planning/Zoning Meeting – Monday, February 7, 2022 – 6:30 pm – Town Hall

Workshop Meeting – Wednesday, February 16, 2022 – 6:30 pm – Town Hall

Town Board Meeting – Wednesday, March 2, 2022 – 6:30 pm – Town Hall

**TOWN BOARD RESOLUTION
INTRODUCING LOCAL LAW __-2022
TOWN OF MARCELLUS**

At a regular meeting of the Town Board of the Town of Marcellus, held at the Town Hall, 24 East Main Street, in said Town, County of Onondaga, State of New York, on February 2, 2022, at 6:30 P.M., there were:

PRESENT:	Karen Pollard	Town Supervisor
	Jamie Curtin	Councilor
	Gabe Hood	Councilor
	Terry Hoey	Councilor
	Laurie Stevens	Councilor

WHEREAS, Councilor _____ introduced proposed Local Law No. __-2022, "A Local Law Amending The Code Of The Town Of Marcellus To Include Chapter 99, Double Utility Poles," and made the following motion, which was seconded by Councilor _____

WHEREAS, Local Law No. __, 2022 relates to the incomplete transfer of utilities and the failure to remove old utility poles within the Town of Marcellus;

WHEREAS, no other agency has the legal authority or jurisdiction to approve or directly undertake the enactment of Local Laws in the Town of Marcellus, such that there are no other involved agencies within the meaning of the New York State Environmental Quality Review Act (SEQR) with respect to the proposed enactment of said Local Law, with the result that the Town Board shall act as lead agency in this matter; and

WHEREAS, the adoption to said Local Law is an unlisted action for purposes of environmental review under SEQR; and

WHEREAS, the Town Board has determined that a short environmental assessment form (EAF) shall be required in connection with this matter; and

WHEREAS, the said EAF has been prepared and has been reviewed by the Town Board;
and

WHEREAS, the Town Board has considered the adoption of said Local Law, has considered the criteria contained in 6 N.Y.C.R.R. Part 617.7 and has compared the impacts which may be reasonably expected to result from the adoption of said Local Law against said criteria.

NOW, THEREFORE, BE IT RESOLVED, that the enactment of this proposed Local Law is an unlisted action under SEQR, that there are no other involved agencies and the Town Board shall act as lead agency; and it is further

RESOLVED, the Town Board has determined this action shall have no significant adverse impact on the environment; that, accordingly, an environmental impact statement (EIS) shall not be required; and that this resolution shall constitute a negative declaration under SEQR; and it is further

RESOLVED that the Town Board shall conduct a public hearing as to the enactment of proposed Local Law No. __-2022 at the Marcellus Town Hall located at 24 East Main Street in the Town of Marcellus on March 2, 2022, at 6:30 P.M. or as soon thereafter as the matter can be heard, at which time all persons interested on the subject shall be heard.

The question of the foregoing Resolution was duly put to a vote and, upon roll call, the vote was as follows:

VOTE:	Karen Pollard	Town Supervisor	Yes/No
	Jamie Curtin	Councilor	Yes/No
	Gabe Hood	Councilor	Yes/No
	Terry Hoey	Councilor	Yes/No
	Laurie Stevens	Councilor	Yes/No

The foregoing resolution was thereupon declared duly adopted.

DATED: February 2, 2022

CERTIFICATE

**STATE OF NEW YORK)
COUNTY OF ONONDAGA)**

I, the undersigned Town Clerk of the Town of Marcellus, Onondaga County, New York,

DO HEREBY CERTIFY:

That I have compared the foregoing Resolution with the original thereof on file in the Office of the Town Clerk of the Town of Marcellus, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town on February ___, 2022.

SANDY TAYLOR, Town Clerk

(SEAL)

**TOWN OF MARCELLUS
LOCAL LAW ____ - 2022**

**A LOCAL LAW AMENDING THE CODE OF THE TOWN OF MARCELLUS
TO INCLUDE CHAPTER 99, DOUBLE UTILITY POLES**

BE IT ENACTED by the Town Board of the Town of Marcellus as follows:

Section 1. Legislative purpose and intent.

The Town Board hereby finds that double utility pole conditions are a problem through the Town of Marcellus. The Town Board finds that the incomplete transfer of utilities and failure to remove old utility poles pose safety and aesthetic concerns for the Town and its residents. Double utility pole conditions clutter and obscure visibility on sidewalks and roadways. They are also unnecessary eyesores on Town streets, obstructions for pedestrians and detriments to local aesthetics.

The Town Board also finds that public safety can be compromised when utility lines and equipment remain affixed to utility poles that weathered or otherwise are damaged. The Town Board finds further that there is often an unreasonable delay of months to years before responsible utility providers relocate their equipment and remove weathered or damaged utility poles.

The Town Board finds and determines that local governments have the authority to regulate their highways, streets, roads and rights-of-way to protect the public.

The Town Board finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the Town.

Therefore, the purpose of this Chapter is to require utilities that use the Town of Marcellus highways, streets, roads and rights-of-way to promptly remove their plants, cables, lines, equipment and terminals from old and damages poles and to further require the prompt removal of double poles once all plants, cables, lines, equipment and terminals have been removed from said poles.

Section 2. Authority.

This local law is enacted pursuant to the New York State Constitution and New York Municipal Home Rule Law §10.

Section 3. Amendment of the Code of the Town of Marcellus to Include Chapter 99, "Double Utility Poles."

The Code of the Town of Marcellus is hereby amended to include a new Chapter 99, titled "Double Utility Poles," which shall read as follows:

"Chapter 99. DOUBLE UTILITY POLES

§ 99-1 Definitions.

DANGEROUS/DAMAGED POLE

Any utility pole or any portion thereof that is structurally compromised due to weather, a traffic incident, and/or age and poses a potential threat to public safety.

DOUBLE UTILITY POLE CONDITION

Any utility pole which is placed in close proximity to another utility pole.

PLANT

The transformers, terminals, conductors, utility boxes, wires, cables, lights, antennae and any other fixture used for the transmission of utilities and attached or affixed to a utility pole.

PUBLIC UTILITY

Any corporation, authority or other entity that provides electric, telephone, cable television or other service, including telecommunications service, to the residents of the Town of Marcellus.

§ 99-2 Street opening permit required.

No person, firm or corporation shall place or erect any pole for any purpose on any Town highway, street, road or right-of-way or change the location of any existing pole on any Town highway, street, road or right-of-way, without first having obtained a street opening permit from the Department of Public Works Superintendent. Application for a permit under this sections hall be made upon a form provided by Department of Public Works Superintendent and upon payment of a permit fee to be set by resolution of the Town Board.

§99-3 Removal of Dangerous/Damaged Utility Poles.

- A. When the Department of Public Works Superintendent, or his or her designee, determines that a utility pole on a Town highway, street, road or right-of-way is damaged or otherwise poses a potential threat to public safety, the Department of Public Works Superintendent shall provide written notice to the pole owner and any public utility with a Plant on the damaged pole that the pole must be repaired, replaced or removed within 15 days or such shorter reasonable time period as may be necessary to protect the public safety.
- B. It shall be the joint and several obligation of the pole owner and any other public utility maintaining a Plant on the Dangerous/Damaged Utility Pole to repair, replace or remove the Dangerous/Damaged Utility Pole within 15 days or such other reasonable period designated by the Department of Public Works Superintendent.

§ 99-4 Double Utility Pole Conditions prohibited.

- A. When a public utility installs a utility pole which is directly next to or in close proximity to another utility pole on a Town highway, street, road or right-of-way, the public utility shall, within 30 days of installation of the new pole, provide written notice all other

public utilities maintaining a Plant on the existing pole that a new pole has been installed and that the Plant on the existing pole must be relocated to the new pole within 90 days of the date of the notice. A copy of such written notice shall be simultaneously transmitted to the Department of Public Works Superintendent.

- B. It shall be the joint and several obligation of the public utility installing the new pole and any other public utility maintaining a Plant on the existing pole to remove the existing pole within 30 days after installation of the new pole.

§ 99-5 Extensions of time.

- A. Notwithstanding any provision of this Chapter to the contrary, the Department of Public Works Superintendent may extend the timeframe of any action under this Chapter for an additional period not exceeding the original statutory timeframe set forth in this Chapter. The public utility shall make a request for an extension in writing to the Department of Public Works Superintendent prior to the expiration of the timeframe contained in the original written notice, together with the basis for the request. The Department of Public Works Superintendent shall determine whether the request for extension should be granted or denied, and provide a written response to the public utility.
- B. In the event of an emergency that affects the repair, replacement, removal or installation of utility poles or Plants, the Department of Public Works Superintendent may temporarily suspend the deadlines described above for periods not exceeding 30 days.

§ 99-6 Penalties.

- A. Any person, firm, corporation or public utility convicted of a violation of the provisions of this Chapter shall be guilty of a violation, as follows: a first conviction is punishable by a fine not exceeding \$500; a second or subsequent conviction is punishable by a fine not exceeding \$1,000. Every day that the violation continues shall be deemed a separate violation. Each location of a Double Utility Pole Condition or Dangerous/Damaged Utility Pole shall be a separate violation.
- B. Any person, firm, corporation or public utility found guilty of violating this Chapter and that fails to remove its Plant from a dangerous/damaged pole, the dangerous/damaged utility pole and/or the double utility pole within 15 days from receipt of the order of the court shall be punished by a penalty of up to \$1,000 for each such violation. Each day that the violation continues shall be a separate violation.
- C. If a person, firm or corporation or public utility violates the provisions of this Chapter, the attorney for the Town may commence an action in the name of the Town of Marcellus in a court of competent jurisdiction seeking any remedy provided by law or equity, including any civil and/or injunction proceeding necessary to enforce compliance and/or enjoin noncompliance with this Chapter. Such action may seek to remove Damaged/Dangerous Poles and/or any Double Utility Pole Condition and may be commenced against a third-party Plant owner to remove Plant from such poles, to impose

civil penalties as authorized by this Chapter, to recover costs of the action and such other remedies as may be necessary to prevent or enjoin a dangerous condition from existing on a Town highway, street, road or right-of-way.

§99-7 Applicability.

- A. The provisions of this Chapter shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations, and nothing in this Chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the Town, county or state or existing requirements of any other applicable state or local laws, codes or regulations. In case of conflict between any provision of this Chapter and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail.
- B. This Chapter shall apply to all utility poles located on any Town highway, street, road or right-of-way as of the enactment of this Chapter and to all utility poles installed after the enactment of this Chapter.
- C. Any person, firm, corporation or public utility which maintains a Double Utility Pole Condition as of the date of the adoption of this Chapter shall fully comply with the regulations set forth herein within 30 days of enactment of this Chapter. Any failure to timely comply with this Subsection C shall be enforced in accordance with the provisions of this Chapter.

§ 99-7 Severability.

If any clause, sentence, paragraph, word, section or part of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved or in the controversy in which said judgment shall have been rendered.

Section 4. Effective Date.

This Local Law shall be effective upon filing with the Office of the Secretary of State.”

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information			
Name of Action or Project:			
LOCAL LAW __-2022 Amending the Code of the Town of Marcellus to Include Chapter 99, Double Utility Poles			
Project Location (describe, and attach a location map):			
Town-Wide			
Brief Description of Proposed Action:			
To establish a procedure for addressing incomplete transfer of utilities and failure to remove old utility poles within the Town of Marcellus, pursuant to the New York State Constitution and New York Municipal Home Rule Law § 10.			
Name of Applicant or Sponsor:		Telephone: 315-673-3269	
Town Board of the Town of Marcellus		E-Mail: clerk@marcellusny.com	
Address:			
24 East Main Street			
City/PO:		State:	Zip Code:
Marcellus		New York	13108
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			YES
			☐
			☒
2. Does the proposed action require a permit, approval or funding from any other government Agency?			NO
If Yes, list agency(s) name and permit or approval:			YES
			☐
			☐
3. a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned _____ acres			
or controlled by the applicant or project sponsor?			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☐ Residential (suburban)			
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify):			
☐ Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	☐	☐	☐
b. Consistent with the adopted comprehensive plan?	☐	☐	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO ☐	YES ☐	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO ☐	YES ☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO ☐	YES ☐	
b. Are public transportation services available at or near the site of the proposed action?	☐	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	☐	☐	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO ☐	YES ☐	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO ☐	YES ☐	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO ☐	YES ☐	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO ☐	YES ☐	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	☐	☐	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO ☐	YES ☐	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☐	☐	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☐ Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO ☐	YES ☐
16. Is the project site located in the 100-year flood plan?	NO ☐	YES ☐
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO ☐	YES ☐
a. Will storm water discharges flow to adjacent properties?	☐	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	☐	☐
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO ☐	YES ☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO ☐	YES ☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO ☐	YES ☐
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: <u>Town Board of the Town of Marcellus</u> Date: <u>February 2, 2022</u> Signature: <u>Karen Pollard</u> Title: <u>Town Supervisor</u>		

Short Environmental Assessment Form
Part 1 - Question 1: Narrative Description

**A LOCAL LAW AMENDING THE CODE OF THE TOWN OF MARCELLUS
TO INCLUDE CHAPTER 99, DOUBLE UTILITY POLES**

Part 1 - Question 1: Narrative Description

The proposed action will adopt a Local Law amending the Code of the Town of Marcellus to include Chapter 99, "Double Utilities Poles," which establishes a procedure for addressing incomplete transfer of utilities and failure to remove old utility poles within the Town of Marcellus, pursuant to the New York State Constitution and New York Municipal Home Rule Law § 10.

Project: LL __-2022 (Double Utility Poles)

Date: February 2, 2022

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	☒	
2. Will the proposed action result in a change in the use or intensity of use of land?	☒	
3. Will the proposed action impair the character or quality of the existing community?	☒	
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	☒	
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	☒	
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	☒	☐
7. Will the proposed action impact existing:	☒	
a. public / private water supplies?	☒	
b. public / private wastewater treatment utilities?	☒	
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	☒	
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	☒	
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	☒	
11. Will the proposed action create a hazard to environmental resources or human health?	☒	

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.



Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town Board of the Town of Marcellus

February 2, 2022

Name of Lead Agency

Date

Karen Pollard

Town Supervisor

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

**TOWN OF MARCELLUS
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that there has been presented to the Town Board of the Town of Marcellus, New York, on February 2, 2022, pursuant to the Municipal Home Rule Law, proposed Local Law No. __-2022, titled, "A Local Law Amending The Code Of The Town Of Marcellus To Include Chapter 99, Double Utility Poles." Said Local Law, if enacted, will establish a procedure for addressing incomplete transfer of utilities and failure to remove old utility poles within the Town of Marcellus. The full text of said Local Law is on file at the Clerk's Office at the Town Hall located at 24 East Main Street, Marcellus, New York for inspection by all interested persons during regular business hours.

NOTICE IS FURTHER GIVEN that on February 2, 2022, the Town Board determined that this proposed Local Law is an unlisted action pursuant to the State Environmental Quality Review Act and a negative declaration was adopted at that time.

NOTICE IS FURTHER GIVEN that the Town Board will hold a public hearing to consider proposed Local Law No. __-2022 at the said Town Hall on March 2, 2022, at 6:30 p.m. or as soon thereafter as the matter can be heard, at which time all persons interested will be heard.

SANDY TAYLOR
Town Clerk

DATED: February __, 2022

**TOWN BOARD RESOLUTION
ENACTING LOCAL LAW __-2022
TOWN OF MARCELLUS**

At a regular meeting of the Town Board of the Town of Marcellus, held at the Town Hall, 24 East Main Street, in said Town, County of Onondaga, State of New York, on March 2, 2022, at 6:30 P.M., there were:

PRESENT:	Karen Pollard	Town Supervisor
	Jamie Curtin	Councilor
	Gabe Hood	Councilor
	Terry Hoey	Councilor
	Laurie Stevens	Councilor

WHEREAS, the following resolution was offered by Councilor _____, who moved its adoption, seconded by Councilor _____, to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. __-2022, "A Local Law Amending The Code Of The Town Of Marcellus To Include Chapter 99, Double Utility Poles" was presented and introduced at a regular meeting of the Town Board of the Town of Marcellus held on February 2, 2022; and

WHEREAS, a public hearing was held on such proposed local law on this 2nd day of March, 2022, by the Town Board of the Town of Marcellus and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Marcellus in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, the enactment of Proposed Local Law No. __-2022 has previously been determined to be an Unlisted Action and will have no significant adverse impact on the environment thus concluding the SEQR review process; and

WHEREAS, it is in the public interest to enact said Proposed Local Law No. __-2022.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Marcellus, Onondaga County, New York, does hereby enact proposed Local Law No. __-2022 as Local Law No. __-2022 as follows:

**"TOWN OF MARCELLUS
LOCAL LAW __- 2022**

**A LOCAL LAW AMENDING THE CODE OF THE TOWN OF MARCELLUS
TO INCLUDE CHAPTER 99, DOUBLE UTILITY POLES**

BE IT ENACTED by the Town Board of the Town of Marcellus as follows:

Section 1. Legislative purpose and intent.

The Town Board hereby finds that double utility pole conditions are a problem through the Town of Marcellus. The Town Board finds that the incomplete transfer of utilities and failure to remove old utility poles pose safety and aesthetic concerns for the Town and its residents. Double utility pole conditions clutter and obscure visibility on sidewalks and roadways. They are also unnecessary eyesores on Town streets, obstructions for pedestrians and detriments to local aesthetics.

The Town Board also finds that public safety can be compromised when utility lines and equipment remain affixed to utility poles that weathered or otherwise are damaged. The Town Board finds further that there is often an unreasonable delay of months to years before responsible utility providers relocate their equipment and remove weathered or damaged utility poles.

The Town Board finds and determines that local governments have the authority to regulate their highways, streets, roads and rights-of-way to protect the public.

The Town Board finds and determines that the interest of the public is best served by cooperation and communication between public utilities and the Town.

Therefore, the purpose of this Chapter is to require utilities that use the Town of Marcellus highways, streets, roads and rights-of-way to promptly remove their plants, cables, lines, equipment and terminals from old and damages poles and to further require the prompt removal of double poles once all plants, cables, lines, equipment and terminals have been removed from said poles.

Section 2. Authority.

This local law is enacted pursuant to the New York State Constitution and New York Municipal Home Rule Law §10.

Section 3. Amendment of the Code of the Town of Marcellus to Include Chapter 99, "Double Utility Poles."

The Code of the Town of Marcellus is hereby amended to include a new Chapter 99, titled "Double Utility Poles," which shall read as follows:

"Chapter 99. DOUBLE UTILITY POLES

§ 99-1 Definitions.

DANGEROUS/DAMAGED POLE

Any utility pole or any portion thereof that is structurally compromised due to weather, a traffic incident, and/or age and poses a potential threat to public safety.

DOUBLE UTILITY POLE CONDITION

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The transformers, terminals, conductors, utility boxes, wires, cables, lights, antennae and any other fixture used for the transmission of utilities and attached or affixed to a utility pole.

PUBLIC UTILITY

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§ 99-2 Street opening permit required.

No person, firm or corporation shall place or erect any pole for any purpose on any Town highway, street, road or right-of-way or change the location of any existing pole on any Town highway, street, road or right-of-way, without first having obtained a street opening permit from the Department of Public Works Superintendent. Application for a permit under this sections hall be made upon a form provided by Department of Public Works Superintendent and upon payment of a permit fee to be set by resolution of the Town Board.

§99-3 Removal of Dangerous/Damaged Utility Poles.

- A. When the Department of Public Works Superintendent, or his or her designee, determines that a utility pole on a Town highway, street, road or right-of-way is damaged or otherwise poses a potential threat to public safety, the Department of Public Works Superintendent shall provide written notice to the pole owner and any public utility with a Plant on the damaged pole that the pole must be repaired, replaced or removed within 15 days or such shorter reasonable time period as may be necessary to protect the public safety.
- B. It shall be the joint and several obligation of the pole owner and any other public utility maintaining a Plant on the Dangerous/Damaged Utility Pole to repair, replace or remove the Dangerous/Damaged Utility Pole within 15 days or such other reasonable period designated by the Department of Public Works Superintendent.

§ 99-4 Double Utility Pole Conditions prohibited.

- A. When a public utility installs a utility pole which is directly next to or in close proximity to another utility pole on a Town highway, street, road or right-of-way, the public utility shall, within 30 days of installation of the new pole, provide written notice all other public utilities maintaining a Plant on the existing pole that a new pole has been installed and that the Plant on the existing pole must be relocated to the new pole within 90 days of the date of the notice. A copy of such written notice shall be simultaneously transmitted to the Department of Public Works Superintendent.
- B. It shall be the joint and several obligation of the public utility installing the new pole and any other public utility maintaining a Plant on the existing pole to remove the existing pole within 30 days after installation of the new pole.

§ 99-5 Extensions of time.

- A. Notwithstanding any provision of this Chapter to the contrary, the Department of Public Works Superintendent may extend the timeframe of any action under this Chapter for an additional period not exceeding the original statutory timeframe set forth in this Chapter.

The public utility shall make a request for an extension in writing to the Department of Public Works Superintendent prior to the expiration of the timeframe contained in the original written notice, together with the basis for the request. The Department of Public Works Superintendent shall determine whether the request for extension should be granted or denied, and provide a written response to the public utility.

- B. In the event of an emergency that affects the repair, replacement, removal or installation of utility poles or Plants, the Department of Public Works Superintendent may temporarily suspend the deadlines described above for periods not exceeding 30 days.

§ 99-6 Penalties.

- A. Any person, firm, corporation or public utility convicted of a violation of the provisions of this Chapter shall be guilty of a violation, as follows: a first conviction is punishable by a fine not exceeding \$500; a second or subsequent conviction is punishable by a fine not exceeding \$1,000. Every day that the violation continues shall be deemed a separate violation. Each location of a Double Utility Pole Condition or Dangerous/Damaged Utility Pole shall be a separate violation.
- B. Any person, firm, corporation or public utility found guilty of violating this Chapter and that fails to remove its Plant from a dangerous/damaged pole, the dangerous/damaged utility pole and/or the double utility pole within 15 days from receipt of the order of the court shall be punished by a penalty of up to \$1,000 for each such violation. Each day that the violation continues shall be a separate violation.
- C. If a person, firm or corporation or public utility violates the provisions of this Chapter, the attorney for the Town may commence an action in the name of the Town of Marcellus in a court of competent jurisdiction seeking any remedy provided by law or equity, including any civil and/or injunction proceeding necessary to enforce compliance and/or enjoin noncompliance with this Chapter. Such action may seek to remove Damaged/Dangerous Poles and/or any Double Utility Pole Condition and may be commenced against a third-party Plant owner to remove Plant from such poles, to impose civil penalties as authorized by this Chapter, to recover costs of the action and such other remedies as may be necessary to prevent or enjoin a dangerous condition from existing on a Town highway, street, road or right-of-way.

§99-7 Applicability.

- A. The provisions of this Chapter shall be deemed to supplement applicable state and local laws, ordinances, codes and regulations, and nothing in this Chapter shall be deemed to abolish, impair, supersede or replace existing remedies of the Town, county or state or existing requirements of any other applicable state or local laws, codes or regulations. In case of conflict between any provision of this Chapter and any applicable state or local law, ordinance, code or regulation, the more restrictive or stringent provision or requirement shall prevail.
- B. This Chapter shall apply to all utility poles located on any Town highway, street, road or

right-of-way as of the enactment of this Chapter and to all utility poles installed after the enactment of this Chapter.

- C. Any person, firm, corporation or public utility which maintains a Double Utility Pole Condition as of the date of the adopted of this Chapter shall fully comply with the regulations set forth herein within 30 days of enactment of this Chapter. Any failure to timely comply with this Subsection C shall be enforced in accordance with the provisions of this Chapter.

§ 99-7 Severability.

If any clause, sentence, paragraph, word, section or part of this Chapter shall be adjudged by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, word, section or part thereof, directly involved or in the controversy in which said judgment shall have been rendered.

Section 4. Effective Date.

This Local Law shall be effective upon filing with the Office of the Secretary of State.”

The question of the foregoing Resolution was duly put to a vote and, upon roll call, the vote was as follows:

VOTE:	Karen Pollard	Town Supervisor	Yes/No
	Jamie Curtin	Councilor	Yes/No
	Gabe Hood	Councilor	Yes/No
	Terry Hoey	Councilor	Yes/No
	Laurie Stevens	Councilor	Yes/No

The foregoing resolution was thereupon declared duly adopted.

DATED: March 2, 2022

CERTIFICATE

**STATE OF NEW YORK)
COUNTY OF ONONDAGA)**

I, the undersigned Town Clerk of the Town of Marcellus, Onondaga County, New York,

DO HEREBY CERTIFY:

That I have compared the foregoing Resolution with the original thereof on file in the Office of the Town Clerk of the Town of Marcellus, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Board had due notice of said meeting and that, pursuant to Section 103 of the Public Officers Law, said meeting was open to the general public.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Town on March ___, 2022.

SANDY TAYLOR, Town Clerk

(SEAL)

INTERIM TOWN ASSESSOR

PROFESSIONAL SERVICES AGREEMENT

This Agreement made this _____, 2022 by and between the TOWN OF MARCELLUS, a municipal corporation organized and existing under the laws of the State of New York, its principal office and place of business at 24 East Main Street, Marcellus, New York 13108 (the "Town"), and FITTS APPRAISAL CO., whose address is 31 North Main Street, Homer, New York 13077, hereinafter (the "Contractor").

WITNESSETH:

WHEREAS, the Town previously appointed Lawrence Fitts (Mr. Fitts) as Town Assessor pursuant to a written agreement;

WHEREAS, Mr. Fitts unfortunately and unexpectedly has died;

WHEREAS, the Town desires to hire the Contractor to provide ministerial assessment services in the Town on an emergency and temporary basis;

NOW, THEREFORE, the parties hereto agree as follows:

1. The Contractor shall provide Assessment services to the Town of Marcellus. For real property assessment services (the actual assessment of real property) that may be required during the emergency period contemplated under this contract, the Town hereby appoints Contractor to provide the actual assessment services. For ministerial or administrative services, like assisting residents in filling out forms or answering assessment questions, other staff of Contractor can be used.

2. The Town of Marcellus shall pay the sum of five hundred twenty-six dollars and ninety-two cents (\$526.92) per week to the Contractor for services rendered upon receipt of documentation as required by the Town. The Contractor on a (monthly) basis will bill services. The Contractor is responsible as an independent contractor for estimated payments of State and Federal income taxes and self-employment taxes. The Contractor will not hold out or claim to be an employee, officer or agent of the Town or any of its departments in any matter.

3. Contractor will provide staff at the Marcellus Town Hall on _____ and _____ of every week from 9 a.m. to 12 noon to assist residents in assessment related matters.

4. The duration of this Contract shall be from February 1, 2022 through April 30, 2022 unless terminated before per this Contract. This Contract may be extended by the mutual agreement of the parties.

5. This professional services contract may not be assigned by the Contractor.

6. The Contractor further agrees to indemnify, defend, and hold the Town harmless of all claims made against it, its officers, and employees, in connection with any services provided by the Contractor.

7. Upon execution of this Agreement, Contractor shall supply proof of Contractor's E&O insurance coverage which shall be in an amount satisfactory to the Town.

8. The Town may terminate this Contract at any time with or without cause upon at least five (5) days written notice to the Contractor.

9. The Contractor agrees to comply with all Federal, State, County or other municipal laws or regulations and Town's policies that pertain to the performance of the agreement.

10. The Contractor will not discriminate on the basis of age, race, color, national origin, religion, sex, sexual orientation, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by law.

11. This Contract constitutes the entire agreement between the parties hereto, and no statement, promise, condition, understanding, inducement or representation, which is not contained herein, shall be binding or valid. This contract shall not be changed, modified or altered in any manner except by written agreement or amendment executed by the parties. Any actions or proceedings concerning this agreement shall be venued in Onondaga County and governed by the laws of the State of New York.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be made and executed the day and year first above written.

TOWN OF MARCELLUS

By: _____
Name:
Title:

FITTS APPRAISAL CO.

By: _____
Name:
Title:

Dear Karen Pollard,

I'm writing this letter to request the use of Marcellus Park on Monday July 4th, 2022 for our annual Teal There's a Cure 5k run/walk event. This will be our fourteenth year holding this event at Marcellus Park. Teal There's a Cure is a non profit local organization that raises money for ovarian cancer research, patient support, education, and awareness.

Our timeline includes setting up between 6-630am, registration beginning at 7:00am, the race starting at 8:00am and we typically finish taking everything down, cleaning up, etc by 1130-12pm. We are responsible for taking everything we bring into the park and all the trash out with us.

I hope the board considers letting us continue to use the park to hold our annual event for ovarian cancer. If you have any questions, please don't hesitate to call or email me at 315-751-3481 or . Thank you for your time.

Sincerely,
Colleen Crawford
Co-director of Teal There's a Cure



Kenneth Waldby, CSP
Coordinator of Health & Safety
Health, Safety & Risk Management
Phone: (315) 431-8591
Fax: (315) 433-2633

RECEIVED

JAN 26 2022

TOWN of Marcellus

January 10, 2022

Karen Pollard, Town Supervisor
Town of Marcellus
24 East Main Street
Marcellus, NY 13108

Dear Ms. Pollard:

Enclosed are two copies of the 2022 Contract for Professional Services between the Onondaga-Cortland-Madison BOCES and the Town of Marcellus for your review. The text of the agreement and scope of services is unchanged from last year.

If this contract meets your needs, please sign and return both copies to my attention at: Onondaga-Cortland-Madison BOCES, P.O. Box 4754, Syracuse, NY 13221-4754. I will then have our administration sign and return an original to you for your records.

If you have any questions regarding services, please feel free to contact me at 315-431-8591.

Sincerely,

Kenneth Waldby, CSP
Coordinator of Health & Safety

encl.

cc: Joseph Bufano, Director of Human Resources/School Attorney
Phil Grome, Asst. Superintendent for Administration
Dr. Matthew Cook, District Superintendent

RECEIVED

JAN 26 2022

INTERMUNICIPAL AGREEMENT

Town of Marcellus

This agreement (the "Agreement") made this ____ day of _____ 20__ by and between the Onondaga-Cortland-Madison Board of Cooperative Educational Services, ("**Contractor**") and the Town of Marcellus ("**Client**"). Contractor and Client shall be collectively referred to as "the Parties".

Recitals

WHEREAS, the Contractor will provide the services herein listed, to the Client, pursuant to the Public Employee Safety and Health Act of 1980;

WHEREAS, the Client desires to engage the Contractor for the professional services outlined herein (the "Services");

WHEREAS, the Contractor has agreed to provide the Client with trained personnel to offer such Services;

WHEREAS, the Client and Contractor are municipalities and pursuant to the authority contained in Article 5-G of the General Municipal Law of the State of New York and in Title 1-A of the Local Finance Law and, pursuant to the authority granted generally to school districts and BOCES, wish to cooperate with one another for the provision of training services; and

WHEREAS, Client and Contractor deem the entry into this AGREEMENT essential for their mutual benefit.

NOW, THEREFORE, in consideration of the premises; the mutual covenants and agreements hereinafter set forth, the mutual benefits expected to be derived from the performance thereof, and other good and valuable consideration, the Parties agree as follows:

1. **SERVICES**. Contractor shall provide to Client the Services. The Services shall consist of:

Health, Safety, and Risk Management Service:

- a. Review and Update Written Programs;
 - i. Hazard Communication Program, 29 CFR 1910.1200 (e) (1);
 - ii. Lock-out/Tag-out Energy Control Program, 29 CFR 1910.147 (c) (1).
- b. Training for Town Highway, Parks & Recreation Employees:
 - i. Workplace Violence
 - ii. Personal Protective Equipment Training, 29 CFR 1910.132 (f) (1);
 - iii. Lock-out/Tag-out for Affected Employees Training, 29 CFR 1910.147 (c) (7) (i) – General Overview for Parks & Recreation Employees;
 - iv. Lock-out/Tag-out Training for Authorized Employees - Highway Employees
 - v. Hazard Communication-(Globally Harmonized System (GHS))

compliant) /Right-to-Know Training, 29 CFR 1910.1200 (h) Labor Law § 878 (1), (2).

c. Recordkeeping:

- i. Employee Exposure Records (Chemical Product Usage) - Labor Law § 879 and 12 NYCRR § 820.5 (a);
- ii. Training Records - Labor Law § 878 (1), (2) and 12 NYCRR § 820.4 (g).

2. **TERM AND TERMINATION.**

- a. The term of this Agreement shall commence on January 1, 2022 and continue through and until December 31, 2022. Either PARTY may terminate this Agreement at any time and for any reason by giving sixty (60) days prior written notice to the other party.
- b. In addition to termination without cause, the PARTY not otherwise in breach may terminate this Agreement immediately upon written notice in the event of any of the following:
 - i. The other PARTY becomes disqualified to perform its obligations under this Agreement; or
 - ii. The other PARTY breaches any covenant, obligation, condition, or requirement imposed upon it by this Agreement, and such breach continues for a period of ten (10) days after written notice thereof from the non-breaching PARTY.

3. **PRICING AND PAYMENT.** The provisions of this section shall govern the pricing and rates to be paid under this Agreement and the payment terms. Pricing is as follows:

- a. \$2,000 for services rendered as outlined above.

4. **INVOICING.** Contactor will submit invoices for fees to Client during the Term. Client shall pay invoices forty-five (45) days after Client's receipt of Contractor's invoice.

5. **INDEMNIFICATION.**

- a. The Client, in consideration of the agreements contained herein, accepts full and complete responsibility and liability for the training content. Client shall indemnify, defend and hold harmless Contractor, its employees, Board Members and agents, from and against all loss, damage, fines, expense, actions (including reasonable attorneys' fees) and claims arising out of its acts or omissions under the Agreement and its use of the Services and the training services. This indemnity shall not apply to losses adjudicated to be caused solely or in part by the negligence of Contractor or its employees, representatives or agents but shall be assessed as to comparative negligence and cost shared accordingly.
- b. Subject to the availability of lawful appropriations and to the extent permitted by applicable law, Contractor shall indemnify, defend and hold harmless Client its employees, and agents, from and against all loss, damage, fines, expense, actions and claims proximately caused by and arising out of or in connection with Contractor's acts or omissions under the Agreement. This indemnity shall not

apply for losses caused solely or in part by the negligence of Client, but shall be assessed as to comparative negligence and cost shared accordingly.

6. **ASSIGNMENT.** Neither PARTY may assign or transfer this Agreement, in whole or in part. Any attempt to assign or transfer any of the rights, duties or obligations hereunder is null and void.
7. **DISCLAIMER OF ALL REPRESENTATIONS AND WARRANTIES.** THE TRAINING AND SERVICES ARE PROVIDED "AS IS" AND CONTRACTOR DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER OR NOT IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE TRAINING AND SERVICES OR ANY OF THE TRANSACTIONS REASONABLY CONTEMPLATED BY THE PARTIES HERETO PURSUANT TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CLIENT KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED OR IS OTHERWISE, IN FACT, AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CLIENT USAGE IN THE TRADE OR BY COURSE OF DEALING.
8. **LIMITATIONS LIABILITY.** CONTRACTOR SHALL NOT BE LIABLE TO CLIENT FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES ("INDIRECT DAMAGES") OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF CONTENT ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES
9. **MERGER.** This Agreement, including any supplements to or revisions thereof, exclusively states the rights and obligations of the PARTIES and supersedes all other agreements between the PARTIES.
10. **AMENDMENT.** This Agreement may not be amended or modified except by written agreement signed by a duly authorized representative of both PARTIES.
11. **SEVERABILITY.** In the event that the operation of any portion of this Agreement results in a violation of any law, the PARTIES agree that such portion shall be severable and that the remaining provisions of this Agreement shall continue in full force and effect.
12. **DISPUTE RESOLUTION.** This Agreement shall be deemed to have been drawn in accordance with the statutes and laws of the state of New York and in the event of any disagreement or dispute, the laws of this state shall apply. The PARTIES hereby submit to the personal jurisdiction of all state and federal courts in the County of Onondaga, state of New York and submit to the exclusive jurisdiction of such courts for purposes of resolving any dispute arising under this Agreement.
13. **ENTIRE AGREEMENT.** This Agreement states the entire agreement between the

PARTIES with respect to the subject matter hereof and superseded all prior written and oral negotiations, agreements and understandings with respect thereto. Each PARTY to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any PARTY which are not embodied herein, and any such agreements, statement or promise not contained in this Agreement shall not be binding. As of the date of this Agreement, all previous agreements concerning the same subject matter between the PARTIES shall be canceled.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the date first above written.

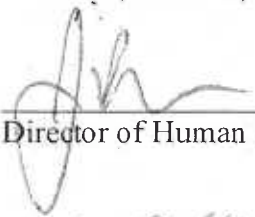
15-6001033

Client (Tax ID #)

24 East Main Street

Marcellus, NY 13108

Address



Director of Human Resources/School Attorney



Assistant Superintendent for Administration



District Superintendent

Supervisor, Town of Marcellus

February 2, 2022 – Contracts – Concerts in the Park

The Horn Dogs	June 30, 2022	\$600
Thunder Canyon	July 7, 2022	\$600
The Strangers	July 14, 2022	\$500
Faded Vinyl	July 21, 2022	\$600
Jim Rogalia & the Swamp Boys	August 11, 2022	\$600

**TOWN OF MARCELLUS AND MARCELLUS FIRE DEPARTMENT
AGREEMENT FOR FIRE SERVICE (2022)**

THIS AGREEMENT, made the 1st day of January, 2022, by and between the Town of Marcellus, a municipal corporation situated in the County of Onondaga, State of New York (hereinafter "Town"), and Marcellus Fire Department, Inc., a Not-For-Profit corporation, organized and existing under the laws of the State of New York and having its principal place of business in Marcellus, New York (hereinafter "Department").

WITNESSETH:

WHEREAS, Department is a Not-For-Profit Corporation organized exclusively for charitable and educational purposes and as part of those purposes, desires to provide fire protection and rescue services to persons in the Town of Marcellus including the entire corporate limits of the village of Marcellus; and

WHEREAS, such fire protection and rescue services are vital and necessary to the health and welfare of the inhabitants of the Town of Marcellus including the corporate limits of the village of Marcellus, as now included in the Marcellus Fire Protection District; and

WHEREAS, the Department maintains adequate and suitable apparatus, appliances and equipment for the furnishing of fire protection of said district; and

WHEREAS, the Town agrees that Department shall be the exclusive provider of primary fire protection services in the Town of Marcellus, including the village of Marcellus as now included in the fire protection district; and

WHEREAS, the Department does not maintain an ambulance and will not provide general ambulance services.

WHEREAS, a special law has been enacted that has permitted the town and village to extend the Marcellus Fire Protection District into the village of Marcellus, thus creating one fire protection district encompassing all of the limits of the town, including the corporate limits of the village of Marcellus, and such extension has now occurred.

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

1. PROVISION OF EMERGENCY SERVICES

Department will provide Town with personnel, apparatus, vehicles and equipment necessary to provide fire protection and rescue services capable of properly responding to emergencies on an on-going basis within the Town of Marcellus Fire Protection District. Fire protection shall be defined as Section 184 of the Town Law, but shall not include inspections of buildings and properties in the Town of Marcellus for the purposes specified in and as authorized by sections 187-a and 183 of the Multiple Residence Law, and section 189 of the Town Law. Fire Protection shall not include the provision of general ambulance services.

2. THE FIRE STATION

During the term of this agreement, the Town shall provide Department with suitable housing in order to house the Department's apparatus, equipment, vehicles and supplies and in order to provide such fire protection and shall maintain such housing in good order.

The Department acknowledges the Marcellus Fire Hall located at 4242 Slate Hill Road, Marcellus, New York constitutes suitable housing.

The maintenance of the building and property shall be the responsibility of the Department utilizing designated funds from Schedule "A"

The Department may establish a reserve fund for the maintenance of the fire station. The balance of said building maintenance reserve fund shall not exceed \$75,000. The Department further agrees to notify the Town Board and obtain approval from the Town, for any maintenance projects in excess of \$5,000 and follow all Department procurement policies with respect to same.

3. TERM

The term of this Agreement shall commence on January 1, 2022 and shall continue until December 31, 2022 unless sooner terminated as herein provided.

4. COMPENSATION AND VFBL

Town agrees to pay Department those amounts as provided in Schedule "A", payable in installments as set forth in Schedule "B". Such funds shall be used by the Department solely for the administration of the fire department equipping fire department as necessary for recruitment and retention, and for such other purposes as related to providing fire protection or administering a fire department and as permitted by the Department's not-for-profit status.

Department shall provide reports to the Town, no less than monthly, with itemized income and expenses which, at a minimum, disclose all income received from any and all sources. This report must be received and approved by the Town Board prior to and as a pre-requisite to any installment payment made by the Town to the Fire Department pursuant to Schedules "A" and "B" to this Agreement. Department shall notify the town of any change in expense line item from which funds were originally budgeted, but in no event shall the Department expend funds in excess of \$5,000 outside the line item budget without Town approval. Except as may be restricted by paragraph two (2) above, the Department may transfer any unexpended portion of any line item to a capital or reserve fund. The Department will provide a report annually of the amount of the capital and reserve funds. The report will also include the line item surpluses from that year applied to the capital or reserve fund.

In addition to the foregoing, the Fire Department will provide to the Town each year prior to and in preparation for the Town's budget process the following:

- a statement itemizing the estimated costs attributable to the contract with the Town, including costs related to supplies, materials, operation, maintenance and repair of equipment and apparatus; insurance; training; protective clothing, gear and other

- personnel costs; building rental, maintenance and operation; and a specified proportionate share of capital costs.
- the fire company's most recent annual report of directors pursuant to Not-For-Profit Corporation Law Section 519 (if applicable);
- the fire company's most recent verified certificate pursuant to Not-For-Profit Corporation Law Section 1402(f) (if applicable);
- the fire company's most recent internal revenue service form 990; and
- the fire company's most recent annual report pursuant to General Municipal Law Section 30-a.

Town shall arrange coverage for benefits required under the Volunteer Firefighters Benefit Law and the New York State Firefighter Cancer Benefit program and shall be responsible for all increases in costs of any coverage under these benefit programs.

5. HOLD HARMLESS AGREEMENT

Town recognizes that Department is staffed by volunteers and that Department can only make reasonable efforts to recruit and retain volunteers. Town agrees to hold Department harmless for Department's failure to provide sufficient manpower at any single incident. Town shall also hold Department harmless for all claims, actions and suits against the Town for any act or omission of the Department beyond the amount of any exposure covered by insurance.

6. INSURANCE

Town agrees to maintain liability insurance sufficient to insure itself against claims for unintentional torts resulting in personal injuries in an amount of not less than One Million Dollars (\$1,000,000.00). Town shall name the Department as an additional insured in Town's insurance policy and shall provide proof of such insurance to the Department.

Department shall at all times and without any gap in coverage maintain automobile insurance for personal injuries and property damage arising out of the operation of emergency and firefighting vehicles in an amount of not less than One Million Dollars (\$1,000,000.00). Department shall name the Town as an additional insured, shall provide proof of such coverage to the Town, and shall cause the Town to be notified by the insurance carrier in case of any lapse of coverage.

7. BILLING

Department shall not bill any person for any fire protection or rescue services.

8. EXPIRATION OR TERMINATION OF RESPONSIBILITIES

Upon expiration or termination of the Agreement as provided hereunder, Department shall have no liability or responsibility for providing services under this Agreement to any person or property within the boundaries of the Town of Marcellus. Town agrees to defend, indemnify and hold Department harmless for any claim, suit, proceeding or action, arising from Department's failure to provide adequate or sufficient services to any person or property within the Town of Marcellus's boundaries after this Agreement expires or terminates.

9. GROUND FOR TERMINATION

Department may terminate this Agreement upon the Town's failure to deliver the monies due Department under this Agreement by the date due, so long as Department provides twenty (20) days written notice to the Town of the date it will cease providing services. If the Town remits such funds to the Department during this twenty (20) day notice period, Department shall not terminate services based upon the Town's failure to pay this annual contract payment.

Town may terminate this Agreement upon the loss or suspension of Department's ability to deliver fire protection services, or upon the failure of Department to continuously respond to requests for fire protection or rescue services within the Town's boundaries for a period of no less than two (2) weeks, so long as Town provides Department written notice of the date services will no longer be permitted. Department shall be provided the opportunity to cure such loss, suspension or failure, and shall have three (3) days from receipt of notice from the Town to provide such protection under the terms of this Agreement.

10. EQUIPMENT

The parties agree that trucks and equipment purchased in whole or in part with public funds provided by the Town shall be owned and maintained by the Department. The Department agrees however that said trucks and equipment shall be made available for the exclusive benefit of the residents of the Town of Marcellus and for mutual aid, without limitation, for the duration of this agreement and for a period of five (5) years following the termination or expiration of this Agreement.

It is furthermore the clear intent of the parties that Department trucks and equipment always be available for the benefit of the Town residents. Accordingly, in addition to the foregoing, the Department, as consideration for the right to own and hold title to the trucks and equipment, will also amend its Certificate of Incorporation to state that said equipment and trucks will be available for and utilized without limitation for the benefit of the residents of the Town of Marcellus and for mutual aid.

The Department further agrees to amend the Certificate of Incorporation such that the intent of the Department is that upon dissolution of the Department, said equipment and trucks ownership revert to the Town of Marcellus or to an entity designated by the Town.

The foregoing amendments to the Certificate of Incorporation may not be altered or amended without the approval of the Town of Marcellus and are a condition precedent to this Agreement.

The Department agrees to establish and maintain a separate capital account for vehicle purchases and agrees that said funds will be restricted to the purchase of said vehicles only.

All of the provisions of this paragraph ten (10) pertaining to Equipment shall survive the expiration or termination of this Agreement.

11. RESTRICTION ON CAPITAL PURCHASES

Department shall not make any capital purchase or incur any debt, either of which requires financing, if such purchase/financing would require an increase in the Department's budget in the

future years for the term of the financing beyond the term of this Agreement, unless Department first obtains the approval of the Town.

12. QUARTERLY REPORTS

Department shall provide quarterly reports to town no later than April 15, July 15, October 15 January 15, detailing the number of calls to which the Department responded, in which town the call was located, and of such other information as the town may from time to time require.

Department shall also provide each month an income and expense report detailing the income and expenses of the Department pertaining to the contractual funds. Notwithstanding and in addition to the requirements within this paragraph, the Department will also comply with the requirements of paragraph 4 of this Agreement when rendering its monthly reports. The expenses shall be itemized by line item. Each line item shall indicate the amount of funds budgeted, spent and remaining. The Department shall also obtain a semi-annual independent audit and provide a report of the audit along with an inventory of equipment to the Town within thirty (30) days of its receipt of the audit report. The Town has paid for that portion of the audit which relates to public funds as part of the funds budgeted in Schedule A.

13. NOTICES

All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing, and shall be deemed duly given if delivered by hand or mailed by registered or certified mail, return receipt requested, to the parties at the following address:

Marcellus Fire Department, Inc.
Attn: President
4242 Slate Hill Road
Marcellus, New York 13108

Town of Marcellus
Attn: Supervisor
24 East Main Street
Marcellus, New York 13108

14. SAVINGS CLAUSE

If any provision of this Agreement is determined to be legally invalid, inoperative or unenforceable, only that particular provision shall be affected, such determination shall have no effect whatsoever on any other provision of this Agreement, and all other provisions shall remain in full force and effect. Should the law be amended such that any term of this Agreement shall be rendered null and void or unenforceable, or should the law require a provision in this Agreement that is not presently recited, such agreement shall be deemed amended as of the effective date of the amendment to the law.

15. WAIVER

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

16. HEADINGS

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

17. FURTHER ASSURANCES

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

18. BINDING EFFECT

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

19. COUNTERPARTS

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

20. GOVERNING LAW

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

21. NO ASSIGNMENT

In accordance with the provisions of Section 109 of the General Municipal Law of the State of New York, Department is hereby prohibited from assigning, transferring, conveying, or otherwise disposing of this agreement, or its power to execute this Agreement, to any other person or corporation without the express written consent of Town. Any such assignment or disposition without such consent shall be void and unenforceable.

22. ENTIRE AGREEMENT

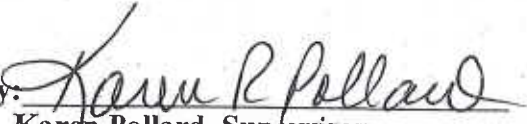
This Agreement is the entire agreement among the parties and shall not be changed, except by a writing signed by the party to be charged. This Agreement shall supersede all prior agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals as of the day and year first above written.

Town of Marcellus

Marcellus Fire Department, Inc.

By:


Karen Pollard, Supervisor

By: _____

, President

SCHEDULE A

Contractual Payment:	\$239,390.00
-plus-	
Truck & Equipment Reserve:	\$ 60,000.00
-plus-	
Building Maintenance Fund:	<u>\$ 30,000.00</u>
TOTAL:	\$329,390.00

SCHEDULE B

On or before January 15, 2022
On or before April 15, 2022
On or before June 15, 2022
On or before September 15, 2022

Twenty-five Percent (25%) of Schedule A
Twenty-five Percent (25%) of Schedule A
Twenty-five Percent (25%) of Schedule A
Twenty-five Percent (25%) of Schedule A