

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, December 1, 2010, at 8:00 p.m. in the Council Room of City Hall. *The Council will convene at 7:30 p.m.* and it is expected they will adjourn into Executive Session at 7:31 p.m. to discuss personnel matters.*

AGENDA

1. Pledge of Allegiance
2. Roll Call
3. General Announcements.
4. Draft unapproved minutes of the Budget Workshop held November 15, 2010, the Regular Meeting/Budget Workshop of the City Council held November 17, 2010 and the Budget Workshop held November 22, 2010.
5. Residents may be heard who have matters to discuss that do not appear on the agenda.
6. Mayor's Management Report
 - Update from the Playland Strategic Planning Committee
 - Legal Update
7. Resolution to act on proposed Budget modifications.
8. Public Hearing to amend Local Law Chapter 167, Section 48C, Removal of snow and ice by City; cost; penalties, and Local Law Chapter 191, Vehicles and Traffic, Section 191-32 through 191-35, Penalties for parking offenses, to modify selected parking ticket fines.
9. Public hearing on the proposed 2011 Budget.
10. Public Hearing to repeal Chapter 76 "Dogs" and replace it with a new Chapter 76 "Dogs", now that the State has relinquished enforcement to the City.
11. Resolution authorizing the six-month extension of the PILOT Agreement between Avon Capital Corporation and the Westchester County IDA.
12. Consideration to set a public hearing for a License Agreement Application submitted by NextG Networks, Inc. for telecommunications access in the Public Rights-of-Way.
13. Presentation by David E. Bronston, Esq., Long Island Fiber Exchange (LIFE), regarding their application for a permit for telecommunications access in the Public Rights-of-Way.

14. Resolution authorizing the City Manager to enter into a contract with the County of Westchester for Snow and Ice Removal on County Roads for the period October 1, 2010 to September 30, 2015.
15. Resolution to declare certain City of Rye equipment as surplus.
Roll Call.
16. Miscellaneous communications and reports.
17. Old Business.
18. New Business.
19. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, December 15, 2010.

** City Council meetings are available live and re-cablecast by RTV on Cablevision Channel 75 and Verizon Channel 39; they are also available for replay, video on demand, at <http://rye.peg.tv>.

* Office Hours of the Mayor on 12/01/10 will be held at 7:00 pm in the Mayor's Conference Room prior to the scheduled executive session.



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: December 1, 2010

CONTACT: Dawn F. Nodarse

AGENDA ITEM: Draft unapproved minutes of the Budget Workshop held November 15, 2010, the Regular Meeting/Budget Workshop of the City Council held November 17, 2010 and the Budget Workshop held November 22, 2010, as attached.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Approve the Unapproved Minutes of the Budget Workshop held November 15, 2010, the Regular Meeting/Budget Workshop of the City Council held November 17, 2010 and the Budget Workshop held November 22, 2010, as attached.

DRAFT UNAPPROVED MINUTES of the
Budget Workshop of the City Council of the City of
Rye held in City Hall on November 15, 2010 at 8:00
P.M.

PRESENT:

DOUGLAS FRENCH Mayor
RICHARD FILIPPI
PAULA J. GAMACHE
PETER JOVANOVICH
SUZANNA KEITH
CATHERINE F. PARKER
JOSEPH A. SACK
Councilmembers

ABSENT: None

The Council convened at 7:30 p.m. Councilman Filippi made a motion, seconded by Councilman Jovanovich and unanimously carried to immediately adjourn into executive session to discuss attorney/client matters. Councilwoman Gamache made a motion, seconded by Councilman Sack and unanimously carried, to adjourn the executive session at 8:30 p.m. The regular meeting convened at 8:42 p.m.

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

Mayor French began by saying that if the City held the forecast for 2010, government spending would be flat from 2009 at \$29.5 million. The 2011 proposed budget is an increase of \$500,000. He added that there is a strategic move toward flattening the organization and using technology and other service contracts to help obtain long-term sustainability for the City.

3. Discussion of the FY 2011 Budget

- Debt Schedule

City Comptroller Gribbins outlined the City's debt policy regarding mandatory and permissive referendums. In October 2003, the City Council passed a Resolution stating that the City will go out for mandatory referendums only at general elections, believing it was best for the City's financial position. There are no funds budgeted for a special election in 2011. In 2011 the City can only borrow about \$104,000 by Council vote. It will only increase to \$203,000 in 2012 if nothing is borrowed in 2011. Therefore, any significant borrowing would be subject to permissive or mandatory referendum. In either case, the Council must identify exactly what projects will be done, what it wants to bond for, and what to borrow and then pass a specific Resolution. The Resolution must be adopted at least 60 days prior to the election, so, in order to bond for 2012 capital, a bonding resolution would have to be passed prior to August 11th. A permissive referendum allows the public the opportunity to file a petition at the City Clerk's Office indicating that they are opposed to the proposed bonding. The number required for the petition is determined by a formula based on votes cast in the last general election. If the required number is reached it would require that the referendum become a mandatory referendum at a general election. In 2011 the Council can borrow \$1.8 million under permissive referendum and \$1.9 million in 2012. Ms. Gribbins added that there are no major drop offs in the City's debt until 2021. She said that until revenues exceed expenses and money can be added to Fund Balance, the City must finance all capital projects with debt. City Manager Pickup added that if the Council was looking at a referendum, the capital project discussions should be held in May or June. He added that most capital projects since 2007 have been reimbursement projects, which have caused cash flow problems because the money had to be laid out by the City.

Comments and questions included:

- The City borrowed money for capital projects in the last year. Would any of the money the City used to pay off 1037 Boston Post Road have been used for capital projects? (The new borrowings were not used to pay for 1037 Boston Post Road. The bonding was to replace cash that was laid out for capital projects.)
 - Would it be beneficial to consider borrowing the \$1.8 million that that City must pay out for the Central Avenue Bridge prior to being reimbursed? (This was done when the Revenue Anticipation Notes (RAN's) were approved by the Council. The money will be borrowed when the work begins.)
 - Why is there a discussion of referendum when there are no projects that will require bonding in 2011? (Preparation must be started in 2011 if projects for 2012 will require bonding.)
 - The page in past budgets that shows capital projects that are underway or pending should be included in the 2011 Budget document.
 - Is it unprecedented for a City to be as close to their borrowing limit as the City presently is? (The limits are based on City of Rye practice. The Finance Committee was asked for a recommendation and indicated that they did not feel comfortable with changing the limits.)
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- Fund Balance Review

Ms. Gribbins said there is only \$1.3 Million between where the City expects to end 2011 and the lowest level of Fund Balance defined by the City's financial policy of 5% of appropriations. Maintaining a Fund Balance of 2011 appropriations means the City will only be keeping \$1.5 Million in Fund Balance. If the City goes all the way down to the 5% amount, any big event such as the 2007 floods could wipe out the Fund Balance and could not be absorbed by the City. City Manager Pickup said that there is a reserve in the Fund Balance that is designated for tax certioraris. An issue going forward is that there has been a high trend in tax certioraris in the last two years and if the trend continues, the Council may have to consider other options.

Comments and question included:

- How can Fund Balance be raised? (The best case is that revenues come in higher than anticipated and are left in Fund Balance.)
- Does the City establish "Sinking Funds"? (The City does not have "Sinking Funds". Current year debt service is budgeted in appropriations.)
- How different are the forecast numbers for Fund Balance from the original 2010 budget numbers. (The 2010 budget anticipated \$2.4 Million at the end of 2010. That number is now anticipated to be about \$3 Million.)
- What will happen to money in the Contingency Account that is not used by the end of the year? (It goes back into the Undesignated Fund Balance. \$82,000 is projected to go back in.)
- Will the tax certiorari fund have to be increased? (There is money currently available to pay for what is considered to be our existing liability. If the volume of cases continues, the number may have to be increased in the future.)
- Explain the changes to the Risk Retention Fund. (In 2010, fund balance from the Risk Fund was used to lower the tax rate. There is not enough money in that fund to be used for 2011.)

- Revenue Assumptions

City Manager Pickup said that issues from other levels of government, such as aid to municipalities or pension obligations, have directly impacted the City's bottom line. They are out of the City's direct administrative operation and control and in most cases, decisions on these matters occur after the City's budget has been established. It gives the City a limited window to adjust revenues. City Comptroller Gribbins said the City does not know how the state shortfall will affect the City. State aid is projected to come in \$27,000 under budget for 2010 and for 2011 the amount has been reduced by another \$90,000 or 95% of what we expect to get in 2010. She added that all City revenues such as mortgage tax, sales tax, building fees and parking fines, are at risk and, therefore, she did not feel comfortable increasing any of the budgeted revenue numbers at this time.

Comments and questions included:

- Realtors expect the volume of sales to go up but prices to remain stable, which could mean an increase in mortgage tax revenue.

- Month-to-month mortgage tax figures are volatile even in good years.
- Why haven't we budgeted for the possibility that state aid might be cut by 1/3? (There has been no proposal from the Governor-elect. We are working off figures from the current Governor.)
- When do we receive the mortgage tax money? (We get the money twice a year but it is allocated to when it is assigned.)

Mayor French said he believed the City had three separate economic models. The Enterprise Funds are self-sustaining and their rates should be based on competition. A second model is the subsidized model, such as user groups who provide a service. Their fees have not kept up with the rising costs of government. The third economic model is the cost of services provided by the government. He said the costs of violations and fees should be increased on a regular basis in order to keep up with the cost of running the government and providing the service.

Additionally, City Manager Pickup answered a question about positions that have been targeted for elimination in the 2011 budget and said that although the positions reported in a newspaper article as targeted were correct, some of the actual positions are yet to be determined due to collective bargaining and bumping rights. In response to a question about how people can equate the median value of their homes to the assessed value, City Comptroller said she would look into providing that information.

4. Adjournment

There being no further business to discuss Councilman Filippi made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the meeting at 9:54 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on November 17, 2010 at 8:00
P.M.

PRESENT:

DOUGLAS FRENCH Mayor
RICHARD FILIPPI
PAULA J. GAMACHE
PETER JOVANOVICH
SUZANNA KEITH
CATHERINE F. PARKER
JOSEPH A. SACK
Councilmembers

ABSENT: None

The Council convened at 7:30 p.m. Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried to immediately adjourn into executive session to discuss attorney/client matters. Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the executive session at 8:20 p.m. The regular meeting convened at 8:24 p.m

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. General Announcements

Announcements were made regarding upcoming events and meetings that will be held by local organizations and other issues of interest to City residents.

4. Draft unapproved minutes of the regular meeting of the City Council held November 3, 2010 and the special meeting of the City Council held November 8, 2010

Councilman Sack made a motion, seconded by Councilwoman Parker and unanimously carried, to approve the minutes of the regular meeting of the City Council held on November 3, 2010, as amended.

Councilwoman Keith made a motion, seconded by Councilman Jovanovich and unanimously carried, to approve the minutes of the special meeting of the City Council held on November 8, 2010, as amended.

5. Residents may be heard who have matters to discuss that do not appear on the agenda

Jim Amico, 350 Midland Avenue, said that his father had sold the house at 351 Midland Avenue and the contractor the new owner is using is the same one Mr. Amico has complained about in the past regarding his compliance with construction regulations. He asked what will be done by the City to see that the laws are enforced. City Manager Pickup said that as far as he knew, no plans have been submitted to the City yet, and that the City has been clear with the contractor regarding our expectations and does not anticipate a problem.

Larry Lehman, 10 Chester Drive, urged the City Council to consider giving control of the portion of Route 1 that runs through Rye back to the State of New York. He said he believed that retaining oversight over the section of the road to be a form of “elitism” that the City can no longer afford. He does not agree that the road will end up looking like the Port Chester and Mamaroneck portions of Route 1 if this is done. The City Manager was asked to provide the Council with a pros and cons list about the proposal.

6. Presentation of the Citizen’s Budget by the Finance Committee

Councilwoman Gamache, liaison to the Finance Committee, presented the report on behalf of the Committee. The report, which will be put on the City website, was prepared by City staff. The purpose is to provide the public with the key points of the budget, in order for them to be able to participate in budget discussions without the need to review the entire document. The key points are:

- the proposed 2011 tax rate is \$142.54 per \$1,000 assessed value or a 2.16% increase over the 2010 rate, which will equate to a tax increase of \$66.34 for the median home with a market value of \$1,140,000 and assessed at \$22,000;
- revenues are budgeted at \$29.6 million, an increase of \$0.9 million or 3.444% from the 2010 adopted budget;
- expenditures are \$30.1 million, an increase of \$140,000 or 0.47% from the 2010 adopted budget;
- a deficit of \$480,470 will help pay for capital items and will be covered by a drawdown from the General Fund;
- the projected year-end 2011 \$2.8 million of unreserved, undesignated balances remaining in the General Fund equals 9.333% of Expenditures vs. the 5% policy requirement.

7. Mayor’s Management Report

- Legal Update

Interim Corporation Council Kristen Wilson reported on the Beaver Swamp Brook Administrative matter. She said that Harrison hired Beth Evans Associates to prepare an evaluation of the criteria set forth in the Environmental Conservation Law that the Department of

Environmental (DEC) staff was looking for, and their comments were submitted last week. Two other proposed petitioners, who reside in Harrison, responded. There was a conference call this week with the Administrative Law Judge (ALJ). DEC staff did not participate in the conference call and Harrison joined in late. There are still unanswered question. The next step is for DEC to make a SEQRA determination. It is unknown if Harrison's most recent submission was sufficient enough for DEC to make the determination.

8. Consideration to set a Public Hearing to modify selected ticket fines

City Manager Pickup said that if all of the proposed increases go through, there will be a total impact of about \$10,000. City Comptroller Gribbins said that through research it has been determined that many of the subject fines were last increased in 1992 and 1993 and that one fine dates back to 1961. There was also a brief discussion regarding any programs that might be available to help seniors or the disabled shovel their walks after a snowstorm.

Councilwoman Gamache made a motion, seconded by Councilman Sack and unanimously carried to adopt the following Resolution:

WHEREAS, the Council wishes to amend Rye City Code Sections 191-32 "Penalties for offenses against special parking provisions", 191-33 "Penalties for parking offenses in certain areas", and 191-34 "Penalties for parking offenses generally" and 167-48(C) "Removal of snow and ice by City; costs; penalties" to change the penalties for certain offenses; and

WHEREAS, it is now desired to call a public hearing on such proposed increases, now, therefore, be it

RESOLVED, by the Council of the City of Rye as follows:

Section 1. Pursuant to Section 20 of the Municipal Home Rule Law and the Charter of the City of Rye, New York, a public hearing will be held by the Council of said City on December 1, 2010 at 8:00 P.M. at City Hall, Boston Post Road, in said City, for the purpose of affording interested persons an opportunity to be heard concerning such proposed local law.

Section 2. Such notice of public hearing shall be in substantially the following form:

**PUBLIC NOTICE
CITY OF RYE**

Notice of Public Hearing to amend Rye City Code Sections 191-32 "Penalties for offenses against special parking provisions", 191-33 "Penalties for parking offenses in certain areas", and 191-34 "Penalties for

parking offenses generally” and 167-48(C) “Removal of snow and ice by City; costs; penalties” to change the penalties for certain offenses.

Notice is hereby given that a public hearing will be held by the City Council of the City of Rye on the 1st day of December, 2010 at 8:00 P.M. at the City Hall, 1051 Boston Post Road, in said City to amend Rye City Code Sections 191-32 “Penalties for offenses against special parking provisions”, 191-33 “Penalties for parking offenses in certain areas”, and 191-34 “Penalties for parking offenses generally” and 167-48 (C) “Removal of snow and ice by City; costs; penalties” to change the penalties for certain offenses.

Copies of said local law maybe reviewed in the office of the City Clerk.

Dawn F. Nodarse, City Clerk
Dated: November 23, 2010

9. Approval of a Memorandum of Understanding between the City of Rye and the Rye CSEA Local 1000 Department of Public Works Unit

City Manager Pickup said the proposed agreement is for two-years with the CSEA DPW unit which is the unit with the largest number of members. The membership responsibilities include collection of garbage, plowing the snow, road maintenance work, removal of tree limbs and keeping roadways open in emergency situations and maintaining all of the sewer pump stations. The agreement addresses a limited scope. This unit is directly impacted by proposed changes in the 2011 budget. Mr. Pickup said the unit has been very cooperative in working with the City. The wage increase proposal averages out to about 1.5% based on two years. The City feels it is a fair settlement and the Memorandum of Understanding (MOA) has been ratified by the rank and file.

Councilwoman Gamache made a motion, seconded by Councilman Filippi, to adopt the following Resolution:

WHEREAS, the City of Rye and the Rye CSEA Local 1000 DPW Unit have negotiated a new Memorandum of Agreement (MOA) which will replace the agreement which expired on December 31, 2009; and

WHEREAS, the CSEA DPW Unit ratified the proposed terms of the MOA; now, therefore, be it

RESOLVED, that the City Council approve the two year contract MOA between the RYE CSEA Local 1000 DPW Unit for the contract period of 1/1/10 – 12/31/11.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,
Keith, Parker and Sack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

10. Consideration of proposed revision of the Rules and Regulations of the City of Rye Police Department

City Manager Pickup said that this item was removed from a previous agenda in order to give the PBA additional time to comment. No comments or additional information was received from the PBA. The device is similar to in-car camera devices that record police activity. It is found that the recordings are useful in determining actual events. It is recommended that the Council approve the proposed change.

Councilman Sack made a motion, seconded by Councilman Filippi to adopt the following Resolution:

RESOLVED, that the revision to the Rules and Regulations of the City of Rye Police Department, General Order #103.10, "Deployment of Electro-muscular Distuption Device (Taser)", is hereby approved, as submitted.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,
Keith, Parker and Sack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

11. Acceptance of Grant Award from Governor's Traffic Safety Committee in the amount of \$4,500 for participation in the "Selective Traffic Enforcement" program

Councilman Jovanovich made a motion, seconded by Councilwoman Gamache, to adopt the following Resolution:

WHEREAS, the City of Rye has been awarded a New York State grant in the amount of \$4,500 for participation in the statewide "Selective Traffic Safety Program" (STEP); now, therefore, be it

RESOLVED, that the City of Rye accepts the aforementioned grant.

ROLL CALL:

AYES: Mayor French, Councilmembers Filippi, Gamache, Jovanovich,
Keith, Parker and Sack
NAYS: None
ABSENT: None

The Resolution was adopted by a 7-0 vote.

11A. One appointment to the Governmental Policy & Research Committee, for a two-year term, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilwoman Gamache and unanimously carried, to appoint Andrew J. Curtin to the Governmental Policy & Research Committee for a two-year term, expiring on January 1, 2012.

12. Miscellaneous Communications and Reports

Councilwoman Parker reported on issues related to Playland. First, the County is looking to renegotiate the contract with the New England Seafood Company that owns the Pier Restaurant and Tiki Bar to grandfather in the parts of the boardwalk and seashore walkway and pier that the Tiki Bar has been using. The Playland Advisory Group reports that 90% of the issues raised regarding Playland relate to the Tiki Bar. Ms. Parker and Mayor French sent letters to the County asking that they take a hard look at these issues prior to voting on the contract and the County has agreed. There was a brief discussion of issues that might be included in any new contract, such as public order and behavior, access to public areas, the use of a shuttle by the restaurant and noise. Interim Corporation Counsel Wilson said that since the County is looking to expand the current agreement, now would be the time for the Council to raise their issues. Secondly, on November 18th there will be a forum co-sponsored by the Playland Strategic Planning Group and the Rye Historical Society regarding Playland at the Library. City Planner Christian Miller will discuss protections that the City has in place related to the waterfront, wetlands laws and zoning. Former City Clerk Susan Morison will do a presentation on the historic aspects of Playland. There will also be an opportunity for residents to break into smaller groups to create lists of what they would like and not like to happen to Playland.

Councilwoman Keith said that the Shared Roadways Committee met last week and they plan to meet with City Planner Miller in order to focus and target what is realistic. They may come back to the Council in January with recommendations. The Sustainability Committee has also met and have begun their work and will partner with City staff. The Traffic and Pedestrian Safety Committee and City Communications Committee will be meeting this week.

Mayor French reported on the Rye Town Park Committee meeting. A Resolution was passed authorizing City Manager Pickup to come up with recommendations and shared services between the City of Rye and Rye Town Park. The Commission will hold a public workshop on Rye Town Park to discuss capital improvements, pricing and parking.

13. Old Business

City Manager Pickup provided the Council with an update of the Pavement Management Report based on what was done in 2010 as well as where the City is based on the current budget proposal that reduces the annual funding to \$400,000. The report contained charts that compare the impact on pavement conditions if a \$500,000 funding level was maintained and the impact over a period of ten years with the amount reduced to \$ 400,000. He said that since the system has been instituted and funding increased by previous Council's the total paving has increased. Councilman Sack said that whenever a roadway is due for repaving, the City should look at any right-of-way opportunities that may be available. Mr. Pickup said that the Shared Roadways work may offer a way to target locations. The Council asked that the Pavement Management List be made available on the website.

14. New Business

There was no new business to be discussed.

15. Adjournment

Councilwoman Keith made a motion, seconded by Councilman Sack and unanimously carried, to adjourn into Executive Session at 9:32 p.m.

Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the Executive Session at 10:45 p.m.

There being no further business to discuss, Councilwoman Gamache made a motion, seconded by Councilwoman Parker and unanimously carried, to adjourn the meeting at 10:46 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk

DRAFT UNAPPROVED MINUTES of the
Budget Workshop of the City Council of the City of
Rye held in City Hall on November 22, 2010 at 8:00
P.M.

PRESENT:

DOUGLAS FRENCH Mayor
RICHARD FILIPPI
PAULA J. GAMACHE
PETER JOVANOVICH
SUZANNA KEITH (arrived at 8:14 p.m.)
CATHERINE F. PARKER (left at 9:30 p.m.)
JOSEPH A. SACK
Councilmembers

ABSENT: None

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. Discussion of the FY 2011 Budget

- Departmental Operations

The workshop began with a discussion of the Rye Golf Club budget. Mayor French said that a unique aspect of the Golf Club is that they are in competition with other clubs while making a substantial contribution to the City and paying off a bond. He noted that fees are at the top of the market and increasing fees could have an impact on overall revenue. He said it might be time to review the long-term strategic direction of the Club. Golf Club Manager Scott Yandrsevich said that it was the non-resident fees were at the top of the market, but not the resident rates. There was a discussion among the Council about the fee structure and keeping the Club affordable for residents. Mr. Yandrsevich said the Club must prepare its budget without knowing what its membership will be for the following year and if the Council asks them not to increase membership dues for residents, the Club should be allowed to determine the best way to meet that goal. He said that the Club has a \$1 million obligation each year due to debt service, General Fund charges and retiree benefits which they must generate before anything goes back into maintenance. City Manager Pickup said that the cost structure the Club operates on is in place until 2018 when bonds are paid off. There was also a discussion regarding the Club's

method of forecasting its revenues and expenses for the operation of Whitby Castle, with a suggestion that the forecasts should be more realistic as to what is actually expected. Mr. Pickup pointed out that there have been discussions held regarding the form of the Club's budget but that there are still issues relating to how their business model works, which does not follow the City's traditional process. Mr. Yandrasevich said they decrease their expenses if they do not believe they will meet their revenue projections, but if they estimate too low they are required to come to the Council to approve any changes. Mr. Pickup pointed out that there are competing philosophies on how the business should be run, which need to be resolved. Mayor French proposed that the Council and the Golf Commission hold a discussion about the issues in January. Additionally, Mr. Yandrasevich addressed a question regarding membership projections by saying that estimates are based on prior years. He said there may be a 4 to 5% decrease in non-resident members, because smaller private clubs were reducing their fee requirements and making them more attractive to non-residents. He added that some private clubs have closed and that would eliminate some of the competition, which might make their numbers increase. Mr. Yandrasevich was congratulated on the Club's policies that promote environmental sustainability and asked if this could further reduce the golf course maintenance figures. He responded that although there are savings by using organic products, he does not think there will be more savings until organic products are further developed. However, the Club is working with a wetland consultant on Phase I and Phase II stormwater runoff requirements that will allow the Club to capture all of its stormwater runoff and use it for irrigation, which will save on water costs. He said that the Club has looked into alternate energy sources and, although wind energy might be beneficial, the requirement of a windmill is an aesthetic negative for many in the community. He also said that they have not found a solar system that would produce enough energy to make the project worthwhile. Mr. Yandrasevich was asked to provide the Council with information on the trends for the various membership categories. He said that membership dues only make up about 60% of the Club's budget and said that if there was no increase in membership fees for 2010 it might result in maintenance projects being deferred that could eventually result in larger increases. He was asked by the Council to provide a list of the projects the Club was anticipating for 2011 indicating the ones he believes cannot be deferred. Mr. Yandrasevich said that, although not the most popular with residents, the best solution for the Club would be to increase resident fees to bring them closer to non-resident fees.

Former Councilman Mack Cunningham addressed the Council about his belief that the Maximus Report which was done in 2002 and allocates costs for departments to the General Fund was based on a flawed model and hurts the Enterprise Funds. He suggested that following a model used by the Airport, which breaks out individual department costs, would be more appropriate in allocating interdepartmental costs to the Enterprise Funds. It was noted that the City owns the golf course and is entitled to charge reasonable expenses.

The second part of the workshop dealt with recommendations for possible ways to lower spending rates and decrease the tax rate. The topics included:

Legal Services – The Corporation Counsel position should be treated as an independent contractor rather than an employee of the City, which could save approximately \$25,000 in benefit costs. City Manager Pickup said that IRS regulations may preclude the City from doing

so because of the service expectations placed on the Corporation Counsel such as maintaining an office in City Hall and holding regular office hours. A suggestion was made that office hours could be held on Skype or by virtual conferencing and that the agreement with the Corporation Council should be structured in such a way that would allow for independent contractor status.

Materials and Supplies – There could be a potential savings of \$50,000 to \$100,000 in this area, especially in the areas of public safety and transportation, which show a proposed increase.

Permits and violations - The increases proposed by the Council at the last meeting could produce an additional \$10,000 if enacted. The City should look at the entire list of fees and consider cost of living type increases. City Manager Pickup said that it may not be a good idea to increase all fees across the board and Comptroller Gribbins said she could not budget increases in fees that were not approved by the Council prior to the adoption of the budget. There was a discussion by the Council of setting a date at their next meeting for an additional public hearing to raise fees not already addressed. The Council should be provided with a list of fees that have not been raised in years for their consideration. Increasing additional fees could result in another \$50,000 in revenue.

Staff Raises – \$172,000 is budgeted for raises, but, in the current economic environment and with the increases in pension and health costs, it is not a good idea to give raises or bonuses. The amount allocated for bonuses to the APG group (\$44,000) should be eliminated. City Manager Pickup pointed out that some employees have already experienced a net loss in salary due to increases in health care costs. He said that due to the expectations placed on staff by both the Council and the public, he would be hesitant to endorse the Council proposal. Comptroller Gribbins said the bonus is a one-time payment that does not get added to the salary base and is non-pensionable. There was a discussion among the members of the Council regarding this proposal, with opinions voiced in favor and against. Another suggestion was made that bonuses for the APG could be tied to the balance in the Contingency Fund at the end of the year.

Mortgage Tax Revenues and State Aid - The proposed budget is too conservative in forecasting mortgage tax revenue for 2011 and based on assumptions in the real estate market it should be increased by \$50,000. It was suggested that due to the current low mortgage rates, more people may be looking to refinance their mortgages, which could increase the revenue. Comptroller Gribbins reiterated that she did not feel comfortable increasing her projections. There was also a discussion of how the City might cope with a reduction of up to one-third in State aid. Comptroller Gribbins and City Manager Pickup said there is \$300,000 in Contingency but after that is used the City would have to look to cutting projects such as street resurfacing or at consolidating services.

Police Overtime – The City should not incur overtime costs for private events such as the Triathlon or other charity walks. It was pointed out that Not-for-Profit groups that run events expect that there are costs associated with running their events.

Additional Council suggestions included:

- If the Council wants to get to a 0% tax rate it should be done by cutting services or raising fees. The Council should go back to the original proposals for increasing revenue made by staff in June, such as doubling parking permits, increasing the percentage of return by the Recreation Department and reducing the contribution to the Library by \$190,000, and put them back into the budget.
- The Library has been cut by \$100,000. An additional \$90,000 cut would be too drastic.
- People who depend on Recreation Programs like the camps may not be able to pay increased fees.
- The Council should look to increasing fines and fees before making further cuts to the Library and Recreation.

City Manager Pickup said that in order to get to a 1% tax increase the budget would have to be reduced by \$209,000 and between now and the December 1st public hearing staff will look at what would be required to get to that figure.

4. Adjournment

There being no further business to discuss Councilman Filippi made a motion, seconded by Councilwoman Keith and unanimously carried, to adjourn the meeting at 10:51 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Council

DATE: December 1, 2010

CONTACT: Mayor Douglas French

AGENDA ITEM: Mayor's Management Report

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Manager provide a report on requested topics.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Mayor has requested an update from the City Manager on the following:

- Update from the Playland Strategic Planning Committee
- Legal Update



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager's Office

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

ACTION: Resolution to act on proposed Budget modifications.

FOR THE MEETING OF:

December 1, 2010

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Mayor and the Council review and act on the proposed Budget modifications.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Attached please find additional modifications to reduce the proposed 2011 Budget.

Proposed Budget Modifications

1) Reduce Rye Town Park funding	\$ 50,000
2) Reduction in Materials and Supplies	
Decrease in Sewer Repair Expense	\$ 20,000
Decrease in Drainage Repair Expense	\$ 15,000
Decrease in Police Training	\$ 14,560
Decrease in Police Uniforms	\$ 15,000
Decrease in Fire Vehicle Supplies	\$ 10,000
Paystation controllers moved to equipment and financed with Fund Balance	<u>\$ 47,600</u>
Total reduction in materials and supplies	\$122,160
3) Increase Parking Fine Revenue (see Agenda Item #8)	\$ 25,000
4) Change Corporation Counsel and Prosecutor positions from Employees to Independent Contractors to save Payroll Taxes	\$ 25,000
5) Cost Recovery for Police Overtime	<u>\$ 9,000</u>
Total Proposed Budget modifications	\$231,160



CITY COUNCIL AGENDA

NO. 8

DEPT.: Finance

DATE: December 1, 2010

CONTACT: Jean Gribbins, City Comptroller

AGENDA ITEM: Public Hearing to amend Local Law Chapter 167, Section 48C, Removal of snow and ice by City; cost; penalties, and Local Law Chapter 191, Vehicles and Traffic, Section 191-32 through 191-35, Penalties for parking offenses, to modify selected parking ticket fines.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE:

CHAPTER
SECTION

RECOMMENDATION:

IMPACT: Environmental x Fiscal Neighborhood Other:

BACKGROUND:

A proposal has been put forward to modify selected parking ticket fines.

See attached draft Local Law.

**CITY OF RYE
LOCAL LAW NO. 2010**

A Local Law to amend Rye City Code Sections 191-32 “Penalties for offenses against special parking provisions”, 191-33 “Penalties for parking offenses in certain areas”, and 191-34 “Penalties for parking offenses generally” and 167-48(C) “Removal of snow and ice by City; costs; penalties” to change the penalties for certain offenses.

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

Section 1. § 191-32. Penalties for offenses against special parking provisions, of the Code of the City of Rye is hereby amended to read:

Every person convicted of a violation of Article VII or Article VIII or any order, rule, regulation or special direction made thereunder shall be punished by a fine of not less than [\$35] \$50 nor more than [\$60] \$200 or by imprisonment for not more than five days, or by both such fine and imprisonment. Failure to pay such fine on or before the appearance date or upon conviction shall result in an additional charge equal to the imposed fine. Failure to pay the fine within 45 days of the appearance date or date of conviction shall result in an additional charge equal to three times the initial fine. Failure to pay the fine and additional charges within 75 days of the appearance date or date of conviction will result in the assessment of an additional administrative fee equal to 40% of the total of the fines and late charges then due.

Section 2. § 191-33. Penalties for parking offenses in certain areas, of the Code of the City of Rye is hereby amended to read:

Every person convicted of a violation of Article III or any order, rule, regulation or special direction made thereunder, occurring along Forest Avenue between Cornell Place and Sanford Street and along the streets east of Forest Avenue between Cornell Place and Sanford Street, inclusive, shall, for the first conviction thereof, be punished by a fine of not less than [\$35] \$50 nor more than [\$60] \$200. Failure to pay such fine on or before the appearance date or upon conviction shall result in an additional charge equal to the imposed fine. Failure to pay the fine within 45 days of the appearance date or date of conviction shall result in an additional charge equal to three times the initial fine. Failure to pay the fine and additional charges within 75 days of the appearance date or date of conviction will result in the assessment of an additional administrative fee equal to 40% of the total of the fines and late charges then due.

Section 3. § 191-34. Penalties for parking offenses generally, of the Code of the City of Rye is hereby amended to read:

Except as otherwise provided in §§ 191-32 and 191-33, every person convicted of a violation of Article III or any order, rule, regulation or special direction made thereunder shall be punished by a fine of not less than [\$25] \$50 nor more than [\$50] \$200. [In the

event that payment is received by the City of Rye Traffic Violations Bureau within 48 hours following the issuance of said violation, the minimum fine shall be reduced to not less than \$15, provided that the violator has not received three prior parking violations within a year.] Failure to pay such fine on or before the appearance date or upon conviction shall result in an additional charge equal to the imposed fine. Failure to pay the fine within 45 days of the appearance date or date of conviction shall result in an additional charge equal to three times the initial fine. Failure to pay the fine and additional charges within 75 days of the appearance date or date of conviction will result in the assessment of an additional administrative fee equal to 40% of the total of the fines and late charges then due.

Section 4. § 167-48. Removal of snow and ice by City; costs; penalties, of the Code of the City of Rye, is hereby amended to read:

A. In addition to any penalty that may be imposed for any violation of § 167-47 hereof, if the sidewalk in front of or adjacent to any building or lot of ground as aforesaid shall not be cleaned of snow or ice or covered with ashes, sand or some other similar material before the expiration of the time hereinabove specified for cleaning or covering the same, then and in that event the City may proceed to so clean or cover the said sidewalk as provided in § 167-47 hereof, and the cost or expense of doing said work shall be ascertained and a report thereof shall be forthwith filed in the office of the Clerk of said City.

B. Cost of work a lien on premises. The cost of said work, as the same shall appear from the report on file in said City Clerk's office, may be sued for and recovered from said owner, lessee, occupant or other person having charge of said building or lot of ground by the said City and shall be a lien upon premises abutting said sidewalk so reported to have been cleaned or covered as aforesaid. If the said cost is not paid on or before the first day of April next following, the amount thereof shall be levied as part of the tax to be collected upon the premises against which said cost shall be a lien as aforesaid. The same shall be included within the completed tax roll and collected as part of the taxes against the said premises.

C. Penalties. Any person violating any provision of § 167-47 hereof shall, upon conviction thereof, be liable to a fine for each offense of not [more] less than [\$10] \$50 nor more than \$100. Each day such violation is permitted to continue shall constitute a separate offense. The provisions of this section shall be inapplicable to snow deposited on the sidewalk by the City in the course of plowing streets.

Section 5. This local law will take effect immediately on filing in the Office of the Secretary of State.

Deleted language is [bracketed] and new language is underlined



CITY COUNCIL AGENDA

NO. 9

DEPT.: City Manager's Office

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

ACTION: Public hearing on the proposed 2011 City Budget.

FOR THE MEETING OF:

December 1, 2010

**RYE CITY CODE,
CHAPTER
SECTION**

RECOMMENDATION: That the Mayor and the Council conduct the public hearing on the proposed 2011 Rye City Budget.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The City Manager presented the budget November 8th. The Council held Workshops on November 15th, 17th, and 22rd.

The proposed 2011 Budget is available on the City website www.ryeny.gov under City News: 2011 Tentative Budget.

The Budget adoption is scheduled for December 15, 2010.



CITY COUNCIL AGENDA

NO. 10

DEPT.: City Manager

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

ACTION: Public Hearing to repeal Chapter 76 "Dogs" and replace it with a new Chapter 76 "Dogs", now that the State has relinquished enforcement to the City.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

New York State will stop administering dog licenses in 2011. Dog licensing will still be required by State law, but minimum fees for dog licenses and other program requirements will no longer be mandated by the State. Local governments will set fees and tailor dog programs to meet the characteristics of their communities.

The City, which currently sells the licenses, will be taking over the responsibility for renewals, tags and administering a database of licenses, effective January 1, 2011. Rye City Code must be updated to reflect this change.

See attached draft Local Law.

**CITY OF RYE
LOCAL LAW NO. 2010**

**A local law to amend Chapter 76, Dogs, of the
Code of the City of Rye as follows:**

Section 1.

§ 76-1. Purpose.

§ 76-2. Certain dogs exempt.

§ 76-3. License fees.

§ 76-4. Redemption of dogs seized.

§ 76-5. Running at large prohibited.

§ 76-6. When leash required.

§ 76-7. Removal of feces left by dogs.

§ 76-8. Penalties for violations of this Chapter.

[**HISTORY: Adopted by the Council of the City of Rye 2-4-1942 as Section 6-3.5 of Ch. 3 of the General Ordinances; amended in its entirety 6-13-2001 by L.L. No. 2-2001. Subsequent amendments noted where applicable.]**

GENERAL REFERENCES

Animals — See Ch. 157, Sanitary Regulations, Art. I.

§ 76-1. Purpose ~~Running at large prohibited.~~

~~No person owning, harboring or having the custody and control of a dog shall permit such dog to be at large in the City of Rye, elsewhere than on the premises of the owner, except it be on the premises of another person with the knowledge and assent of such other person.~~

The purpose of this local law is to provide for the licensing and identification of dogs, the control and protection of the dog population and the protection of persons, property, domestic animals and deer from dog attack damage.

§ 76-2 Certain dogs exempt. ~~When leash required.~~

~~The owner, harborer or person having the custody and control of a dog in the City of Rye which is not on the premises of the owner or upon the premises of another person with the knowledge and assent of such person shall control and restrain such dog by a chain or leash not exceeding eight feet in length.~~

Any dog harbored within the City of Rye which is owned by a resident of New York City or licensed by the City of New York, or which is owned by a non-resident of New York State and licensed by a jurisdiction outside the State of New York, shall for a period of thirty (30) days be exempt from the licensing and identification provisions of this local law.

§ 76-3 License Fees ~~Penalties for offenses.~~

Every person convicted for a violation of this chapter (except § 76-6) shall, for the first conviction thereof, be punished by a fine of not less than \$15 nor more than \$25; for a second such conviction within one year after the first conviction, such person shall be punished by a fine of not less than \$25 nor more than \$50 or by imprisonment for not more than five days; and upon a third or subsequent conviction within one year after the first conviction, such person shall be punished by a fine of not less than \$50 nor more than \$75 or by imprisonment for not more than 15 days.

All licensing fees are set forth in the Fee Schedule adopted by the City Council. Excepted from payment of the license fee are applications submitted for a dog license for any guide, hearing, service, war, working search, detection, police and therapy dogs. In addition, dogs owned by one or more seniors, 65 years of age or older, shall be exempt from the City's licensing fees. All dog licenses shall carry with it an additional fee of \$10 as authorized by § 110 (4)(a) of the New York State Agriculture and Markets Law.

- A. **All dogs in the City of Rye must be licensed by the City Clerk by the age of 4 months and the owner(s) of such dog(s) must present a current Certificate of Rabies at the time of licensing or the renewal of an existing license. In the alternative, the owner must submit a statement from a licensed veterinarian that such vaccination would endanger the dog's life in which case vaccination shall not be required.**
- B. **All dog licenses will be for a period of one year and will expire at the end of the month one year from the date of issue. Licenses are not transferable.**
- C. **Fees and requirements for licensing of dogs:**
 - a. **The fee for a spayed or neutered dog shall be set by the City Council in the Fee Schedule. It shall include a state assessment pursuant to § 110-3 of the New York State Agriculture and Markets Law, and additional funds for enumeration as provided for by § 110(4)(a).**
 - b. **The fee for an unsprayed or unneutered dog shall be set by the City Council in the Fee Schedule. It shall include a state assessment pursuant to § 110-3 of the New York State Agriculture and Markets Law, and additional funds for enumeration as provided for by § 110(4)(a).**

- c. Enumeration Fee: If the City Council determines the need for a dog enumeration, a fee set by the City Council in the Fee Schedule shall be assessed to all dogs found unlicensed or not renewed at the time enumeration is conducted.
- d. The City of Rye does not allow the licensing of dogs by a shelter. The shelter must notify the adoptive owners of their responsibility to license any dog who will be living within the City of Rye will a list of adoptive owners monthly.
- e. All dogs must wear identification at all times. Show dogs are exempted from the identification requirement of § 111 of the New York State Agriculture and Markets Law during participation.
- f. Notification of a change in dog ownership or that a dog has been lost or stolen must be given to the City of Rye within 30 days of such event.

§ 76-4 Redemption of dogs seized.

The owner of an unlicensed dog, whose dog has been seized, may redeem the dog, pursuant to the provisions of § 118 of the Agriculture and Markets Law, by producing to the person seizing the dog a license for the dog and by paying to the City Clerk the sum of \$25. The owner of a licensed dog, whose dog has been seized, may redeem the dog, pursuant to the provisions of § 118 of the Agriculture and Markets Law, by paying to the City Clerk the sum of \$10.

The owner of any dog impounded shall be entitled to redeem that dog within five (5) business days, excluding the day the dog is impounded, provided that the owner produces proof the dog is licensed and identified and pays fees as set forth in the Fee Schedule adopted by the City Council.

§ 76-5 Running at large prohibited. Additional license fees.

In addition to the annual fee specified under § 110, Subdivision 1(a) and (b), of the Agriculture and Markets Law, there shall be an additional fee of \$10 for each dog license issued thereunder.

No person owning, harboring or having the custody and control of a dog shall permit such dog to be at large in the City of Rye, elsewhere than on the premises of the owner, except if on the premises of another person with the knowledge and assent of such other person.

§ 76-6 When Lease Required Removal of feces left by dogs.

The owner, harborer or person having the custody and control of a dog in the City of Rye which is not on the premises of the owner or upon the premises of another person with the knowledge and assent of such person shall control and restrain such dog by a chain or leash not exceeding eight feet in length.

§ 76-7 Removal of feces left by dog.

Any person who owns, harbors or has the custody of any dog shall remove promptly any feces left by such dog at any place within the city except upon private property with the consent of the owner of such property; provided, however, that this provision is not applicable to a blind person while actually using a guide dog licensed as such pursuant to the Agriculture and Markets Law. In no event shall any feces be deposited in storm or sanitary sewers or drains.

§76-8 Penalties for Violations.

Every person found to have **violated** convicted for a violation of this chapter **shall be liable for a civil penalty** (except § 76-6) shall, for the first conviction thereof, be ~~punished by a fine of not less than \$25 \$15 nor more than \$50 \$25~~; for a second such **determination** conviction within one year after the **date of the prior violation**, ~~first conviction~~, such person shall be **liable for a civil penalty** punished by a fine of not less than **\$50** ~~\$25~~ nor more than **\$75** ~~\$50~~ or by imprisonment for not more than five days; and upon a third or subsequent **determination** conviction within one year after the **date of first violation** ~~first conviction~~, such person shall be punished by a **penalty** fine of not less than **\$75** ~~\$50~~ nor more than **\$100** ~~\$75~~ or by imprisonment for not more than 15 days.

Section 2. This law will take effect on January 1, 2011.



CITY COUNCIL AGENDA

NO. 11

DEPT.: City Manager's Office

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

ACTION: Resolution authorizing a six-month extension of the PILOT Agreement between Avon Capital Corporation and the Westchester County IDA.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

That the Mayor and Council approve the extension.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The current Payment in Lieu of Tax Agreement (PILOT) will expire on December 31, 2010. The purpose of the PILOT is to ensure that no real estate property tax revenues are lost by the City as a result of the IDA's ownership of the property. Avon is requesting an extension of the agreement through June 30, 2011 to prepare for their proposed renovation and upgrade of the facility at 601 Midland Avenue.

A Public Hearing on the extension will be held by the Westchester County Industrial Development Agency (IDA) in Council Chambers at Rye City Hall on Tuesday, November 30, 2010 at 2:00 p.m.

See attached Resolution and background information.

A RESOLUTION STATING NO OBJECTION
TO A SIX MONTH EXTENSION TO THE
WESTCHESTER COUNTY I.D.A. FINANCIAL ASSISTANCE PLAN
FOR AVON CAPITAL CORPORATION (“ACC”)

WHEREAS, ACC/Avon Products, Inc. (hereinafter “Avon”) has operated a facility in Rye at 601 Midland Avenue since the late 1950s; and

WHEREAS, in 1995, pursuant to Article 18-A of the General Municipal Law, the Westchester County Industrial Development Agency (I.D.A.) approved financial assistance for Avon to develop a financial service center at its facility in Rye; and

WHEREAS, the financial assistance to Avon resulted in sales tax savings in regard to the planned development costs; and

WHEREAS, the financial assistance also included a PILOT agreement entered into by Avon to ensure that no real estate property tax revenues are lost by the City as a result of the I.D.A. involvement; and

WHEREAS, on September 20, 1995, the Rye City Council unanimously adopted a resolution stating no objection to the Avon/I.D.A. financial assistance plan; and

WHEREAS, the term of the financial assistance plan and PILOT agreement expires on December 31, 2010; and

WHEREAS, Avon has requested a six (6) month extension to the existing financial assistance plan and PILOT agreement to allow Avon time to obtain required approvals from the City of Rye to renovate and upgrade its Midland Avenue facility; and

WHEREAS, pursuant to Section 859-a of the General Municipal Law, the I.D.A. held a public hearing on November 30, 2010 in the City of Rye on the six (6) month extension request;

RESOLVED, that the City Council of the City of Rye has no objection to the six (6) month extension of the I.D.A. financial assistance plan and PILOT agreement, which continues to ensure that no real estate property tax revenues are lost by the City as a result of the I.D.A. involvement.

McCULLOUGH, GOLDBERGER & STAUDT, LLP

ATTORNEYS AT LAW

1311 MAMARONECK AVENUE, SUITE 340

WHITE PLAINS, NEW YORK

10605

(914) 949-0400

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**FRANK S. McCULLOUGH (1905-1998)
EVANS V. BREWSTER (1920-2005)**

**FRANK S. McCULLOUGH, JR.
CHARLES A. GOLDBERGER
JAMES STAUDT
LINDA B. WHITEHEAD
SETH M. MANDELBAUM
EVAN M. EISLAND**

**MICHAEL V. CARUSO
JOANNA C. FELDMAN
DEBORAH A. GOLDBERGER
EDMUND C. GRAINGER, III
PATRICIA W. GURAHIAN
ALICE D. KORNFELD
RUTH F.L. POST**

November 22, 2010

VIA HAND DELIVERY

**Honorable Mayor French
and Members of the City Council
City of Rye
1051 Boston Post Road
Rye, New York 10580**

**Re: Six (6) Month Extension of PILOT Agreement
between Avon Capital Corporation ("ACC")
and the Westchester County IDA ("IDA"),
dated as of January 24, 1996**

Dear Hon. Mayor French & Members of the Council:

This firm represents ACC/Avon Products, Inc. (hereinafter "Avon") in connection with the above referenced Payment in Lieu of Tax Agreement (the "PILOT") regarding the premises located at 601 Midland Avenue, Rye, New York (the "Property"). We are writing to request the City's agreement to an extension of the PILOT (which expires on December 31, 2010) through June 30, 2011, for the reasons set forth below. It must be noted that the sole purpose of the PILOT (and any extension thereto) is to ensure that no real estate property tax revenues are lost by the City as a result of the IDA's ownership of the Property (which is leased back to Avon), as was the case in 1995 when this issue first came before the Council (see A Resolution Stating No Objection to the Avon I.D.A. Financial Assistance Plan, dated September 20, 1995, attached hereto for your convenience).

By way of background, Avon has operated an office/distribution facility (the "Facility") at the Property since the late 1950s. The Facility has undergone various expansion and upgrade projects over the years, but is now in serious need of a complete renovation and upgrade in order for the Facility to remain a viable location for Avon in the long term. Avon is prepared to make

a substantial capital investment in the Facility, which will result in the retention of 650 jobs in the City of Rye. However, in order to do so, Avon requires the IDA's continued financial assistance.

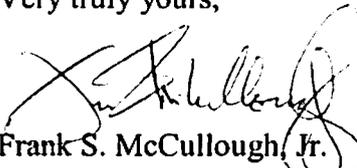
The current agreements between Avon and the IDA, including the PILOT, expire by their terms on December 31, 2010. The requested six-month extension will allow Avon the time necessary to apply for and obtain the required approvals from the City of Rye in connection with the proposed project. These approvals include amended site plan approval (following a public hearing), including a concurrent environmental review process, from the Rye Planning Commission, as well as approval of a new PILOT agreement by both the Rye City Council and the School District (which we anticipate would similarly ensure that Avon continues to pay the full applicable real estate taxes on the Property, as it has always done). As we have discussed with City Planner Christian Miller, we anticipate filing a formal application with the Planning Commission in the next week to ten days.

In addition, as Avon proceeds through the Rye approval process, Avon will also continue its discussions with the IDA concerning the terms of a new project agreement, which would be finalized once the City of Rye approvals are obtained.

Based on the foregoing, we respectfully request on behalf of Avon that this matter be placed on the December 1, 2010 City Council agenda for consideration of a resolution confirming that the City has no objection to the requested six month extension of the PILOT, and authorizing the Mayor or City Manager to execute the necessary documentation to confirm the City's agreement to the six month extension of the PILOT.

If you have any questions or require additional information, please do not hesitate to contact our office.

Very truly yours,



Frank S. McCullough, Jr.

FSM:smm

cc: Avon Capital Corporation
Ms. Theresa G. Waivada—IDA Executive Director
Alan D. Fox, Esq.—IDA Counsel
Scott Pickup--City Manager
Christian Miller—City Planner

Councilman Stampleman made a motion, seconded by Councilman Flick, to adopt the following resolution:

WHEREAS, pursuant to Article 18-A of the General Municipal Law, Avon Products Incorporated (Avon) has made an application to the Westchester County Industrial Development Agency (I.D.A.) for financial assistance in regard to its plan to develop a financial service center at its facility in Rye; and

WHEREAS, pursuant to Section 859-a of the General Municipal Law, the Westchester I.D.A. has authorized Avon to proceed with the proposed project and held a public hearing on August 3, 1995 in Rye; and

WHEREAS, the Avon I.D.A. proposal would involve conveyance of Avon's Rye facility to the I.D.A. which would, in turn sublease the facility back to Avon Capital Corporation (ACC), a wholly owned subsidiary of Avon; and

WHEREAS, the above proposal will result in financial assistance to Avon as a result of sales tax savings in regard to the planned development costs; and

WHEREAS, the loss of sales tax revenue for the City of Rye over the period of the planned I.D.A. project would be negligible; and

WHEREAS, the planned financial service center development involves the addition of 160 employees, but no facility footprint expansion or additional parking; and

WHEREAS, Avon has expressed its willingness to enter into a payment in lieu of taxes (PILOT) agreement with the City of Rye which will ensure that no real estate tax revenues from the facility are lost as a result of the I.D.A. involvement; and

WHEREAS, the City Council of the City of Rye objected to the proposed I.D.A. project at its August 16, 1995 meeting because insufficient information was available as to the terms of the proposed PILOT agreement and the corporate guarantee backing that agreement; and

WHEREAS, that information has now been supplied to the Council; now, therefore, be it

RESOLVED, that the City Council of the City of Rye has no objection to the I.D.A. financial assistance plan as outlined in a letter with attachments to Mayor Dunn from Tom Kavanagh, dated August 10th, which is attached hereto and made a part hereof, provided:

1. A PILOT agreement, in the form of and with the terms of the proposed PILOT agreement attached hereto, and made a part hereof, is entered into by Avon to ensure that no real estate property tax revenues are lost by the City as a result of the I.D.A. involvement; and

2. Avon's performance of the terms of that agreement is secured by a corporate guarantee of the Avon parent company, Avon Products, Inc., which guarantee shall be in the form of and with the terms as the proposed guarantee attached hereto, and made a part hereof.

ROLL CALL:

AYES: Mayor Dunn, Councilmen Burke, Collins, Flick,
Latwin, Stampleman, and Walsh

NAYS: None

ABSENT: None

The resolution passed.

Stephen J. Hunt
Chairman

Theresa G. Waivada
Executive Director

November 17, 2010

Mayor Douglas H. French
Members of the City Council
City of Rye – City Hall
1051 Boston Post Rd
City of Rye, New York 10598

RE: PUBLIC HEARING – Avon Products, Inc.
Council Chambers
Rye City Hall
1051 Boston Post Road
Rye, NY 10580

Dear Mayor French and Members of the City Council:

Pursuant to General Municipal Law, Article 18 A, the County of Westchester Industrial Development Agency will hold a public hearing on November 30, 2010 at 2 pm at Rye City Hall.

The public hearing will provide interested parties an opportunity to both orally, and in writing, present their views with respect to the proposed financial assistance being contemplated by the Agency.

I am attaching a copy of a public hearing notice that appeared in the Journal News on November 16, 2010 concerning the approved referenced project.

Sincerely,


Theresa G. Waivada
Executive Director

Westchester Industrial
Development Agency

Michaelian Office Building, Room 903
White Plains, New York 10601

Telephone: (914) 995-2916 Fax: (914) 995-3044

Website: westchestergov.com

Received

NOV 22 2010

City Manager's Office
Rye, New York

LEGAL NOTICE

PUBLIC HEARING

NOTICE is hereby given pursuant to section 859-a and Article 18-A of the New York State General Municipal Law, that the County of Westchester Industrial Development Agency (the "Agency") will hold a public hearing regarding the extension of an existing project (the "Project") for the benefit of Avon Capital Corporation ("ACC") and Avon Products, Inc. ("API", and collectively with ACC, the "Company" or the "Applicant"), consisting of the Agency providing financial assistance in connection with the acquisition, construction, furnishing and equipping of an approximately 173,000 square foot office and distribution facility located in the City of Rye, County of Westchester, and known by the address 601 Midland Avenue, Rye, New York (the "Facility").

The Agency proposes to extend for a period of six (6) months the financial assistance currently being provided to the Company in connection with the Project pursuant to the New York State Industrial Development Agency Act and the Agency's enabling legislation, respectively Article 18-A and Section 923-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York). The Agency contemplates providing such financial assistance primarily in the form of (i) exemptions from sales and

use tax in connection with the renovation and equipping of the Facility, which will not deviate from the Agency's uniform tax exemption policy ("UTEP"), and (ii) partial abatement of real estate taxes to the extent authorized by the City of Rye, to be reflected in a six-month extension of the existing payment-in-lieu-of-taxes agreement between the Agency and the Company, which may, upon compliance with Section 874(b) of the Act, deviate from the Agency's UTEP.

Applicant: Avon Capital Corporation and Avon Products, Inc. The Applicants' current mailing address is 1345 Avenue of the Americas, New York, New York 10105.

Public Hearing: All persons, organizations, corporations or governmental agencies are invited to submit comments concerning the granting of financial assistance by the Agency for the six-month extension of the Project. The hearing will be held on November 30, 2010 at 2:00 p.m. at the Council Chambers, Rye City Hall, 1051 Boston Post Road, Rye, New York 10580.

Participation at the Hearing: Individuals and representatives of organizations who desire to present oral testimony at the public hearing are requested to phone in their names, addresses and telephone numbers, as well as the organization they represent (if any) to Theresa G. Waivada, Executive Director, at (914) 995-2916 by the close of business on

November 29, 2010. Individual testimony will be limited to 5 minutes, and the Agency requests five (5) copies of such oral testimony be provided to the Executive Director, Theresa G. Waivada at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 no later than the close of business on November 29, 2010. Written comments can be submitted prior to the Hearing at that address.

Information Availability: Information on the proposed amendment to the Project, including the written request for extension and a cost and benefit analysis, is available from the Agency at the address given above.



CITY COUNCIL AGENDA

NO. 12

DEPT.: Interim Corporation Counsel

DATE: December 1, 2010

CONTACT: Kristen K. Wilson, Esq.

AGENDA ITEM: Consideration to set a public hearing for a License Agreement Application (#TC012) submitted by NextG Networks, Inc. for telecommunications access in the Public Rights-of-Way.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council set a public hearing.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: NextG Networks is licensed by the Public Service Commission to provide telecommunication services and is seeking approval to locate a Distributed Antenna Telecommunication System in the public right-of-way. NextG Networks. The Distributed Antenna System (DAS) is usually installed on existing telephone utility poles. They propose to enter into an agreement with the City whereby NextG will be given permission to enter the right-of-way in exchange for paying the City revenue for the equipment which is installed. The compensation would be a percentage of the income received per installation (5% of their gross revenue). Municipalities that fail to enter into the right-of-way agreements with NextG, receive no compensation once the networks are built. The proposal includes the installation of eight DAS boxes in the City. Their installations are low-powered with much lower than the Federal government's limits on radiation exposure.

The application was reviewed by the Board of Architectural Review (BAR).



NextG Networks

EMPOWERING NEXT GENERATION WIRELESS NETWORKS

Corporate Headquarters:

NextG Networks, Inc.
2216 O'Toole Ave.
San José, California 95131

Tel: (408) 954-1580
Fax: (408) 383-5397

Web: www.nextgnetworks.net

Writer's Address:

Joshua S. Trauner
NextG Networks of NY, Inc.
131-05 14th Avenue
College Point, NY 11356

Tel: (718) 463-3591
Fax: (718) 463-3595

Email: jtrauner@nextgnetworks.net

May 21, 2010

Received

MAY 24 2010

City Manager's Office
Rye, New York

VIA USPS PRIORITY MAIL WITH SIGNATURE CONFIRMATION

Hon. Douglas H. French, Mayor
City of Rye
1051 Boston Post Road
Rye, NY 10580

Re: Application for License Agreement between the City of Rye and NextG Networks for Use of the Public Rights-of-Way

Dear Mayor French:

Please accept this letter as the formal application of NextG Networks of NY, Inc. ("NextG"), for a license agreement or other appropriate form of authorization from the City of Rye (the "City") to conduct business as a telecommunications company operating with infrastructure located in the City's public ways. This information is submitted to the City in accordance with Section 253 of the Federal Telecommunications Act of 1996 and the relevant New York statutes governing the use of the public way by telecommunications carriers for the provision of their services.

A. Agreement Form and Purpose

Although an agreement or license is not required for access to the public right-of-way unless such requirement is published in your local laws (see Section I, below), NextG is nonetheless willing to offer an agreement and for this reason, files this letter with you to request a non-exclusive license agreement, franchise, or other appropriate form of authorization from the City in order to install, operate, and maintain fiber optic cable and associated equipment, including optical repeaters and antennas (each equipment location is referred to by the industry as a "node"), on, over and under the public way in the City in connection with the provision of telecommunications provided by NextG as a "carrier's carrier" for its wireless carrier customers. In order to expedite its application and processing, NextG proposes to enter into an agreement with the City substantially in the form attached hereto that includes an offer of annual

compensation to the City in the form of a percentage of NextG's gross revenues and also rent for attachment rights to any municipally-owned infrastructure utilized by NextG.

B. Information about NextG

Information about NextG and its technology and services is contained in a separate document entitled "A Local Official's Guide" enclosed with this letter. Additional information can be supplied to the City upon request.

C. NextG's Business Model

NextG is a facilities-based provider of protocol-agnostic, fiber-based RF transport services. NextG is not a wireless service provider, rather a transport services company, i.e. a "carrier's carrier". NextG's services extend any wireless carrier's RF signal in difficult coverage areas without the need for new cell towers. Although NextG's equipment includes small antennas, we are not considered wireless communication facilities by the New York State Public Service Commission (the "PSC") or the Federal Communications Commission. In the greater New Jersey-New York-Philadelphia market, NextG has successfully deployed more than 2,000 of its nodes, connected by hundreds of miles fiber in many jurisdictions, including: New York City, Philadelphia, Trenton, and nearly 30 additional villages and communities in the greater New York-Philadelphia-New Jersey area and more than 5,000 nationwide.

D. Regulatory Status

NextG has been issued a Certificate of Public Convenience and Necessity ("CPCN") by the PSC. A copy of the CPCN is attached. Our services and equipment are defined and regulated by the PSC as that of a facilities-based provider and reseller of local exchange and interexchange telecommunications services.

E. Proposed Location and Number of Attachments

NextG proposes that its right-of-way use agreement authorize the installation and operation of its equipment and network in, under, and over the public ways of the City on standard-design prefabricated steel poles, wooden distribution poles, newly installed poles and other available structures throughout the City. At this time, NextG has a preliminary map of six (6) locations and we are enclosing it for your review. Since we are still in the design phase, now would be the most appropriate time to engage with NextG on the finalization of the pole and site selection, since it will be difficult to accommodate changes after the initial design is finalized (which will happen in the next couple of months).

F. Use of Poles and Streets; Trenching

In addition to the possible placement of new poles in the right-of-way, NextG's model is, wherever possible, to use existing infrastructure. NextG prefers to attach to third-party utility infrastructure that is owned by Verizon or ConEd. However, NextG can also make its own applications for new utility poles in the public right-of-way, where necessary and on an equal basis with other certificated utility companies regulated by the PSC. Notwithstanding, installation of new poles is not NextG's preference, and we are sensitive to the communities' concerns about minimizing new utility infrastructure in the public ways where none previously existed. Therefore, NextG respectfully requests the City's consideration to avail certain City-owned utility poles, streetlight poles, traffic light poles and/or highway sign supports (collectively "poles") for the placement of telecommunications equipment (including associated cables, brackets and antennas) in accordance with any terms, conditions, and authorized purposes set forth in the proposed right-of-way use agreement. While the design is not yet finalized to the point where NextG can specify the exact City-owned poles that it would like to use, we are interested in working through the details on a framework level so that we can know if the City's infrastructure can be included in the design. Additionally, the entire system will be connected with fiber-optic cables, and to the greatest extent possible, NextG will utilize the existing conduit available for the distribution of fiber optic cable in the City. NextG will use every effort to minimize trenching and boring in the streets of the City by feeding fiber optic cabling directly from existing conduit, where available, to the poles on which optical repeater nodes and related equipment will be attached pursuant to the right-of-way use agreement.

G. Technical Specifications and Drawings

NextG will agree to observe all terms, conditions, limitations and design specifications set forth in the right-of-way use agreement in its installation, deployment and operation of the NextG fiber-fed optical repeater network in the City. Attached to the draft Agreement is an Exhibit A that includes the type of facilities that NextG is proposing. Additional specifications and technical drawings of representative types of equipment can be supplied upon request by the City.

H. Proposed Compensation to City

For use of the public ways and access to utility poles and streetlights (typically owned or controlled either by ConEd or Verizon), NextG proposes a compensation structure under its right-of-way use agreement of five percent (5%) of NextG's gross revenues from services provided in the City. In addition, NextG would compensate the City in the amount of Five Hundred Dollars (\$500.00) per City Owned pole utilized per annum. This is the same rate structure that NextG has offered in several other municipalities.

I. *Alternative if No Agreement is Reached*

NextG hopes to reach a mutually agreeable license with the City for use and occupation of the City's public ways. Our research of the City's code indicates that Chapter 167 of the city Code appears to regulate certificated providers of telecommunications services, such as NextG. Our permit submissions will be in accordance with such Chapter. Under federal law, local jurisdictions may "manage the right-of-way . . . on a competitively neutral and nondiscriminatory basis." 47 U.S.C. 253(c). Federal courts have upheld this statute to mean that a local government cannot impose certain requirements on new entrants (like NextG) without imposing those same requirements on the local incumbent local exchange carrier (the "ILEC"). *TCG New York, Inc. vs. City of White Plains*, 305 F.3d 67 (2nd Cir. 2002). Notwithstanding the state of the law, NextG is making this voluntary application to the City to establish the framework for its deployment, and to discuss the overall proposal in the City now, at a relatively early stage, when the benefits from the opportunity to collaborate can be optimized.

If the City wishes to collaborate with NextG in this effort (e.g., by entering into a form of license or agreement), we respectfully request that you indicate your interest to us within the next thirty (30) days so that we can proceed to negotiate the agreement. If we do not hear from you in that timeframe with an appropriate indication of interest, we will assume that the City does not wish to proceed with an agreement.

Thank you for your consideration and attention to this request. If you have any questions, please do not hesitate to call me at (718) 463-3591. I look forward to setting up a meeting at your convenience to discuss the City's response to this formal letter of application and the next steps required to move NextG's application forward to approval.

Very truly yours,
NEXTG NETWORKS OF NY, INC.



Joshua S. Trauner
Director of Government Relations

cc: Kevin J. Plunkett, Esq., Corporation Counsel
George Mottarella, P.E., City Engineer

Enclosures:

1. Copy of CPCN from NY State PSC
2. Local Official's Guide

RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of _____, 2010 (the "Effective Date"), and entered into by and between the CITY OF RYE, a New York municipal corporation (the "City"), and NEXTG NETWORKS OF NY, INC. a Delaware corporation ("NextG").

RECITALS

A. NextG owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the New York State Public Service Commission, a fiber-based telecommunications Network or Networks (as defined below) serving NextG's wireless carrier customers and utilizing microcellular optical repeater Equipment (as defined below) certified by the Federal Communications Commission.

B. For purpose of operating the Network, NextG wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on facilities owned by the City, as well as on facilities owned by third parties therein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1 **DEFINITIONS.** The following definitions shall apply generally to the provisions of this Use Agreement:

1.1 *City.* ("City") shall mean the City of Rye, New York.

1.2 *Decorative Streetlight Pole.* "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

1.3 *Equipment.* "Equipment" means the optical repeaters, DWDM and CWDM multiplexers, antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by NextG hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as Exhibit A and incorporated herein by reference.

1.4 *Fee.* "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

1.5 *Gross Revenue.* "Gross Revenue" shall mean and include any and all income and other consideration collected, received, or in any manner gained or derived by NextG from or in connection with, the provision of RF telecommunication transport services, either directly by NextG or indirectly through a reseller, if any, to customers of such services wholly consummated within the

City, including any imputed revenue derived from commercial trades and barter equivalent to the full retail value of goods and services provided by NextG. "Adjusted Gross Revenue" shall include offset for: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (exclusive of the Municipal Facilities Annual Fee paid to the City provided herein); (b) retail discounts or other promotions; (c) non-collectable amounts due NextG or its customers; (d) refunds or rebates; and (e) non-operating revenues such as interest income or gain from the sale of an asset.

1.6 ILEC. "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

1.7 Installation Date. "Installation Date" shall mean the date that the first Equipment is installed by NextG pursuant to this Use Agreement.

1.8 Laws. "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

1.9 Municipal Facilities. "Municipal Facilities" means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, or other City-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.10 Network. "Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by NextG to serve its wireless carrier customers in the City.

1.11 NextG. "NextG" means NextG Networks of NY, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.12 Public Way. "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

1.13 PSC. "PSC" means the New York State Public Service Commission.

1.14 Services. "Services" means the RF transport and other telecommunications services provided through the Network by NextG to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the PSC.

1.15 Streetlight Pole. "Streetlight Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

2 TERM. This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically

for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless NextG notifies the City of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term.

3 SCOPE OF USE AGREEMENT. Any and all rights expressly granted to NextG under this Use Agreement, which shall be exercised at NextG's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in NextG a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the City except that it is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or the equivalent under the City's ordinances, codes or laws, shall be required for the installation of NextG's Equipment installed in the Public Way and/or on Municipal Facilities, unless such a process has been required for the placement of all communications facilities and equipment in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

3.1 Attachment to Municipal Facilities. The City hereby authorizes and permits NextG to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. In addition, subject to the provisions of § 4.5 below, NextG shall have the right to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A.

3.2 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits NextG to enter upon the Public Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, NextG shall furnish to the City evidence that NextG has entered into the appropriate pole-attachment agreement required pursuant to N.Y. C.L.S. Pub. Ser. § 119-a. A denial of an application for the attachment of Equipment to third-party-owned poles or structures in the Public Way shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A. Where third-party property is not available for attachment of Equipment, NextG may install its own utility poles in the Public Way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Public Way.

3.3 Preference for Municipal Facilities. In any situation where NextG has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, NextG agrees to attach to the Municipal Facilities, provided that (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (ii) the rental fee and installation

costs associated with such attachment over the length of the term are equal to or less than the fee or cost to NextG of attaching to the alternative third-party-owned property.

3.4 No Interference. NextG in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. The City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises the City may enter into after the Effective Date with other information or communications providers and carriers.

3.5 Compliance with Laws. NextG shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

4 COMPENSATION; UTILITY CHARGES. NextG shall be solely responsible for the payment of all lawful Fees in connection with NextG's performance under this Use Agreement, including those set forth below.

4.1 Annual Fee. In order to compensate the City for NextG's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, NextG shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which a Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. The City represents and covenants that the City owns all Municipal Facilities for the use of which it is collecting from NextG the Annual Fee pursuant to this § 4.1.

4.1.1 CPI Adjustment. Effective commencing on the fifth (5th) anniversary of the Installation Date and continuing on each fifth (5th) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100) which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area (MSA).

4.2 Right-of-Way Use Fee. In order to compensate the City for NextG's entry upon and deployment of Equipment within the Public Way, NextG shall pay to the City, on an annual basis, an amount equal to five percent (5%) of Adjusted Gross Revenues (the "Right-of-Way Fee") payable within thirty (30) days of the Effective Date and on each anniversary thereafter. The Right-of-Way Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. NextG shall make any payment of the Right-of-Way Fee that may be due and owing within forty-five (45) days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within forty-five (45) days after the termination of this Use Agreement, the Right-of-Way Fee shall be paid for the period elapsing since the end of the last calendar year for which the Right-of-Way Fee has been paid. NextG shall furnish to the City with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of NextG or his or her designee, showing the amount of Adjusted Gross Revenues for the

period covered by the payment. If NextG discovers any error in the amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment of the Right-of-Way Fee shall not be deemed to be a waiver by the City of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

4.3 Accounting Matters. NextG shall keep accurate books of account at its principal office in San Jose, CA or such other location of its choosing for the purpose of determining the amounts due to the City under §§ 4.1 and 4.2 above. The City may inspect NextG's books of account relative to the City at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The City agrees to hold in confidence any non-public information it learns from NextG to the fullest extent permitted by Law.

4.4 Most-Favored Municipality. Should NextG after the parties' execution and delivery of this Agreement enter into an attachment or franchise agreement with another municipality of the same size or smaller than the City in the same County (excluding New York City), which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Agreement, the City shall have the right to require that NextG modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

4.5 Electricity Charges. NextG shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment' usage of electricity and applicable tariffs.

5 CONSTRUCTION. NextG shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of NextG's Equipment installed in the Public Way and on Municipal Facilities in the City. NextG shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the City for each location.

5.1 Obtaining Required Permits. If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, NextG shall, if required under applicable City ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the City requests of NextG are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). In the case of Third Party attachments (to existing utility infrastructure), NextG agrees to provide the City with a list of proposed attachments in advance of its deployment to the City and, the City agrees to use reasonable efforts to review and approve NextG's list of proposed attachments to Third Party utility infrastructure within thirty (30) days of submission, and if no comment is received within thirty (30) days, the application will be presumed to be acceptable and no further action will be required prior to NextG's installation.

5.2 Location of Equipment. The proposed locations of NextG's planned initial installation of Equipment shall be provided to the City promptly after NextG's review of available street light maps (if applicable) and prior to deployment of the Equipment. Upon the completion of installation,

NextG promptly shall furnish to the City a pole list showing the exact location of the Equipment in the Public Way.

5.3 Relocation and Displacement of Equipment. NextG understands and acknowledges that the City may require NextG to relocate one or more of its Equipment installations. NextG shall at City's direction relocate such Equipment at NextG's sole cost and expense, whenever the City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, the City shall use its best efforts to afford NextG a reasonably equivalent alternate location. If NextG shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, the City shall be entitled to relocate the Equipment at NextG's sole cost and expense, without further notice to NextG. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform NextG of the displacement or removal of any pole on which any Equipment is located.

5.4 Relocations at NextG's Request. In the event NextG desires to relocate any Equipment from one Municipal Facility to another, NextG shall so advise the City. The City will use its best efforts to accommodate NextG by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

5.5 Damage to Public Way. Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way to be damaged, NextG, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If NextG does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to NextG, to perform or cause to be performed such reasonable and necessary work on behalf of NextG and to charge NextG for the proposed costs to be incurred or the actual costs incurred by the City at the City's standard rates. Upon the receipt of a demand for payment by the City, NextG shall promptly reimburse the City for such costs.

6 INDEMNIFICATION AND WAIVER. NextG agrees to indemnify, defend, protect, and hold harmless the City, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from NextG's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

6.1 Waiver of Claims. NextG waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

6.2 Limitation of City's Liability. The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of the City, its employees, agents, or contractors and shall in no event be liable to indirect or consequential damages.

7 INSURANCE. NextG shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting NextG in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of NextG's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. NextG shall be responsible for notifying the City of such change or cancellation.

7.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, NextG shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that the City shall receive thirty (30) days' prior notice of cancellation;
- (c) that NextG's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and
- (d) that NextG's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

7.2 Workers' Compensation Insurance. NextG shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

7.3 Insurer Criteria. Any insurance provider of NextG shall be admitted and authorized to do business in the State of New York and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

7.4 Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

8 NOTICES. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

if to the City:

CITY OF RYE
Attn: Mayor
Rye City Hall
1051 Boston Post Road
Rye, New York 10580

if to NextG:

NEXTG NETWORKS OF NY, INC.
Attn: Contracts Administration
2216 O'Toole Ave
San Jose, CA 95131

8.1 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

9 TERMINATION. This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10 ASSIGNMENT. This Use Agreement shall not be assigned by NextG without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of NextG to a parent, subsidiary, or other affiliate of NextG or to any successor in interest or entity acquiring fifty-one percent (51%) or more of NextG's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that NextG reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of NextG immediately prior to the transfer; (ii) any such transferee assumes all of NextG's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with NextG's management team, in the provision of telecommunications or similar services, evidences an ability to operate the NextG Network. NextG shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why NextG believes the Exempted Transfer Criteria have been satisfied. The City Council of City shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that NextG gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence

contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from NextG any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives NextG notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the Council of the City fails to act upon NextG's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City Council that NextG has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

11 MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

11.1 Environmental Review. NextG's facilities are "unlisted" but functionally equivalent to Type II actions under 6 N.Y.C.R.R. 617.5(c)(11). NextG agrees to comply with any rules pertaining to State Environmental Quality Review and to submit any required environmental forms for the City's review and approval, so long as the review that the City requires is the same that the City requires of all other telecommunications providers, including but not limited to the ILEC and the cable provider(s), for their installation of any facilities or equipment in the Public Way.

11.2 Nonexclusive Use. NextG understands that this Use Agreement does not provide NextG with exclusive use of the Public Way or any Municipal Facility and that the City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities. The City agrees promptly to notify NextG of the receipt of a proposal for the installation of communications equipment or devices in the Public Way or on Municipal Facilities. In addition, the City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

11.3 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

11.4 Severability of Provisions. If any one or more of the provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

11.5 Contacting NextG. NextG shall be available to the staff employees of any City department having jurisdiction over NextG's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network control center operator at telephone number 1-866-44-NEXTG (446-3984) regarding such problems or complaints.

11.6 Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New York, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such

action shall be vested exclusively in the state courts of New York, in the County where the City is incorporated or in the United States District Court for the Eastern District of New York.

11.7 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

11.8 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

11.9 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.10 Entire Agreement. This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

City: CITY OF RYE, a New York municipal corporation

By: _____

[name typed]

Its: _____

Date: _____, 2010

NextG: NEXTG NETWORKS OF NY, INC., a Delaware Corporation

By: _____

[name typed]

Its: _____

Date: _____, 2010

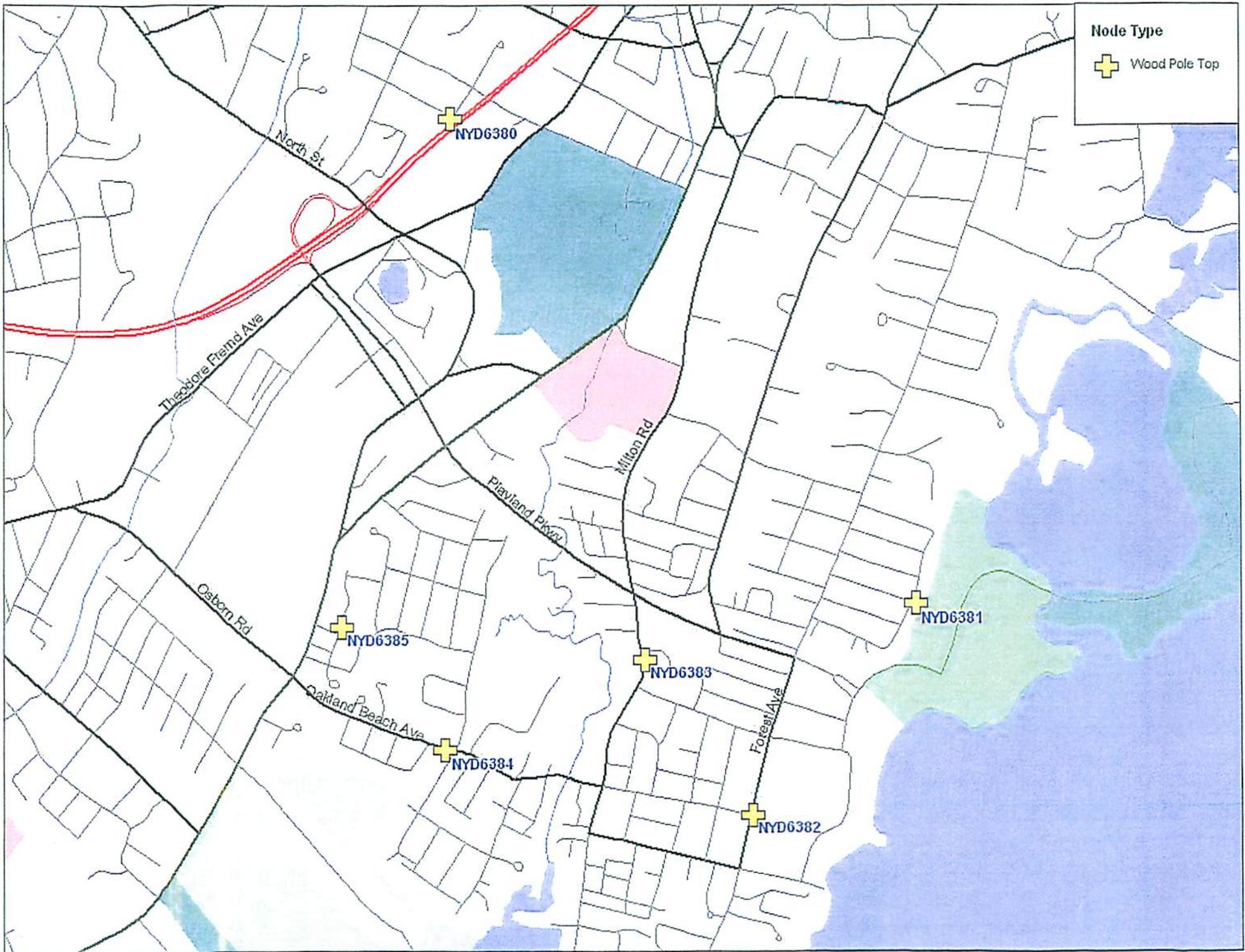
I HEREBY APPROVE the form and legality of the foregoing Use Agreement this _____ day of _____, 2010.

_____, Corporation Counsel

By _____
_____, Deputy City Attorney

Exhibits:

Exhibit A -- Equipment



Node Type

- ✚ Wood Pole Top

✚ NYD6380

✚ NYD6385

✚ NYD6384

✚ NYD6383

✚ NYD6382

✚ NYD6381

North St

Theodore Fremd Ave

Osborn Rd

Oakland Beach Ave

Playland Pkwy

Milton Rd

Forest Ave



CITY COUNCIL AGENDA

NO. 13 DEPT.: Corporation Counsel DATE: December 1, 2010
CONTACT: Kristen Wilson, Interim Corporation Counsel

AGENDA ITEM: Presentation by David E. Bronston, Esq., Long Island Fiber Exchange (LIFE), regarding their application for a permit for telecommunications access in the Public Rights-of-Way.

FOR THE MEETING OF:
December 1, 2010
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Long Island Fiber Exchange (LIFE) is seeking approval to conduct business as a telecommunications company operating with infrastructure located in the City's public ways.

LIFE currently has no facilities in the City of Rye. Their preliminary map (see attached) notes the proposed fiber routes in Rye and surrounding communities.

Pursuant to Sections 196-13 and 196-16 of the Code of the City of Rye the Council may refer the application to the Board of Architectural Review (BAR) and consultant. The applicant would provide an application fee as well as \$5,000 escrow to pay for the consultant selected by and working for the City of Rye. Consistent with prior practice, staff will forward the application to its consultant who will provide a written assessment in advance of the public hearing. See attached application.



Received

MAY 24 2010

City Manager's Office
Rye, New York

A PROFESSIONAL CORPORATION

277 PARK AVENUE NEW YORK, NY 10172 212.883.4900 888.864.3013 212.986.0604 FAX www.cozen.com

May 21, 2010

David E. Bronston
Direct Phone 212.883.4942
Direct Fax 866.832.7206
dbronston@cozen.com

VIA FEDERAL EXPRESS

Hon. Douglas H. French
Mayor
City of Rye
City Hall, 3rd Floor
1051 Boston Post Road
Rye, NY 10580

Hon. Joseph Carvin
Town Supervisor
Town of Rye
10 Pearl Street
Port Chester, NY 10573

George Mottarella
City Engineer
City of Rye
City Hall, 3rd Floor
1051 Boston Post Road
Rye, NY 10580

Kevin J. Plunkett, Esq.
Corporation Counsel
City of Rye
City Hall, 3rd Floor
1051 Boston Post Road
Rye, NY 10580

Paul Noto, Esq.
Town Attorney
Town of Rye
10 Pearl Street
Port Chester, NY 10573

Ladies and Gentlemen:

Please find enclosed an application from Long Island Fiber Exchange for a permit for Telecommunications Access to Public Rights of Way.

We respectfully request, pursuant to Sections 185-106 and 167-5 of the City's ordinances and the applicable section of the Town's ordinances and Federal Communications laws and

applicable court decisions (including, without limitation, TCG New York, Inc. v. City of White Plains, 305 F3d 67 (2nd Cir., 2002), that the City and Town grant a permit or other authorization, if necessary, to LIFE to construct, operate and maintain a fiber optic telecommunications system on, over and under the streets of the City and Town of Rye.

LIFE is an established private company that provides advanced communications services on high bandwidth broadband networks in the New York metropolitan area and, as such, has the right to install infrastructure on, over and under public rights of way.

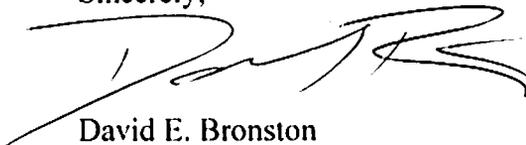
The FCC recently delivered to Congress its National Broadband Plan. The 376-page plan reflects the view that broadband is becoming the common medium of the United States. The more robust a town's network is, the more competitive that town will be in attracting residents and businesses that need and want access to high bandwidth technologies.

Also enclosed is a copy of LIFE's Certificate of Public Service issued by the New York State Department of Public Convenience and Necessity and a informational brochure for your review and for background purposes.

We look forward to providing service to your communities. Please do not hesitate to request any additional information you may need. We, of course, would be happy to meet with you at your mutual convenience to discuss this application further and review the fiber routes.

Thank you for your attention to this matter.

Sincerely,



David E. Bronston

cc: Michael Power

LONG ISLAND FIBER EXCHANGE

SUBMISSION OF APPLICATION

CITY AND TOWN OF RYE

TELECOMMUNICATIONS ACCESS TO PUBLIC RIGHTS OF WAY

Long Island Fiber Exchange respectfully submits the following application.

(1) The name, address, telephone number and e-mail address of the applicant and the person the City may contact concerning the application:

Long Island Fiber Exchange Inc. ("LIFE" or the "Company")
c/o Michael K. Power
120 Lake Avenue South, Suite 15
Nesconset, NY 11767
631-780-6783
mkpower@longislandfiber.com

David E. Bronston
Cozen O'Connor
277 Park Avenue
New York, NY 10172
212.883.4942
DBronston@cozen.com

(2) Description of the telecommunications services proposed to be provided, including, without limitation, a description of facilities and equipment:

LIFE initially proposes to own, construct, manage and maintain fiber optic facilities, primarily on existing utility poles, satisfying customer specific connectivity requirements. In addition, LIFE will own the network and will be responsible for all repair obligations. LIFE may offer High Speed High Bandwidth Internet Services, Telephony Services and Cloud Computing Managed Service offerings. Fiber facilities shall consist of All Dielectric (ADSS) Fiber Cable. LIFE's fiber optic facilities are 100% passive and require no equipment along the fiber backbone other than splice enclosures. However, LIFE will need to install underground HDPE conduit and access vaults in instances where cabling must be installed underground.

(3) Description of the proposed area of service:

Please see attached map #1.

(4) Proposed construction schedule and sequence:

LIFE's construction schedule is still to be determined. However LIFE would like to complete construction by September 2010.

(5) Map showing the proposed location of the applicant's telecommunications system:

Please see attached map #1.

(6) Ownership of the applicant and identification of all affiliated persons:

Long Island Fiber Exchange Inc., a NY Corporation

Michael K. Power, CEO/President & shareholder
Kurt Berlinghof, Vice President Sales & Marketing & shareholder
Enrico Scarda, Vice President Finance Dept. & shareholder
Ron Schule, shareholder
Abbey Blatt, shareholder
George Celentano, shareholder
John Hanlon, shareholder
William Dalton, shareholder
Raymond Tellini, shareholder
Imperium Capital Partners, shareholder

Additional Information

Business Description: Long Island Fiber Exchange, Inc. (LIFE), a New York corporation, is an established facilities-based Competitive Local Exchange Carrier (CLEC) with an existing fiber optic network on Long Island. Its CPCN was issued by the NYSPSC on July 22, 1999. LIFE's core business is constructing, managing and maintaining fiber optic based wide area networks (WANs) for school districts, hospitals, universities, municipalities and businesses. LIFE currently has over 800 miles of high fiber count cables deployed in our current service areas servicing over 470 buildings, representing one of the largest, independently owned fiber optic networks on Long Island. LIFE is on track to construct an additional 150 fiber route miles connecting another 100 buildings within the next 12 months.

The Company was founded in 1999 as a telecommunications business to build fiber networks for local school districts. As individual routes were constructed, the Company interconnected the laterals onto multiple fiber backbones in 2006 to create a seamless, homogeneous fiber network.

LIFE has rapidly expanded its network and customer count to become the leading provider of fiber based networks on Long Island to the education and municipal markets. In constructing the network, the Company purposely designed fiber routes to pass as many enterprise buildings as feasible. As a result, the LIFE network passes over 2,500 multi-tenant commercial office buildings.

LIFE distinguishes itself from its main competitors, such as Verizon and Cablevision, by providing custom specific network design with proactive, high-touch sales, project management

and customer care support. The result is industry leading churn of less than 0.1%.

Financial Summary: The LIFE network represents an exceptionally strong platform that is highly scalable. Almost 100% of LIFE's existing business is on-net. Since the network is 100% owned by the Company, ongoing operating costs are minimal and the vast majority of SG&A is dedicated to new sales and construction. Historically, the Company has secured significant upfront cash payments from its customers for the construction of fiber projects. As of December 2009, total un-amortized Installment Billings were over \$13,000,000 with an average term of sixty months.

LIFE's solid financial performance is highlighted by its consistent year over year growth in revenues, gross margin, EBITDA, customers and lit buildings. For 2009, revenue has grown to \$10,000,000.

Below is a summary of the Company's historical and projected financial performance:

Figure 1: Summary Historical and Projected Financials
(US Dollars in Thousands)

	2005	2006	2007	2008	2009P	2010P
Total Revenue	1,372	2,172	3,631	5,241	10,000	15,000
% Growth		58%	67%	44%	81%	50%
Gross Profit		1,698	3,090	3,891	7,400	11,100
% Margin		78%	85%	74%	74%	74%
EBITDA		614	2,011	3,467	5,000	7,500
% Margin		28%	55%	66%	50%	50%
Cap-Exp		4,249	2,485	3,030	5,800	6,000
Customers	25	50	90	220	350	700
Lit Buildings	92	161	268	353	470	570
Fiber Miles	120	190	350	425	800	950

LIFE's state-of-the-art fiber network totals 800 route miles and 38,000 fiber miles connecting 470 buildings. The network is designed as two core rings of 144 fiber count cables terminating into two diverse data. Fiber laterals are then constructed out from the core rings to allow multiple locations to be physically connected into dark fiber or lit service configurations. The core lit network is composed of redundant Lucent-Alcatel 6850 Ethernet switches allowing LIFE

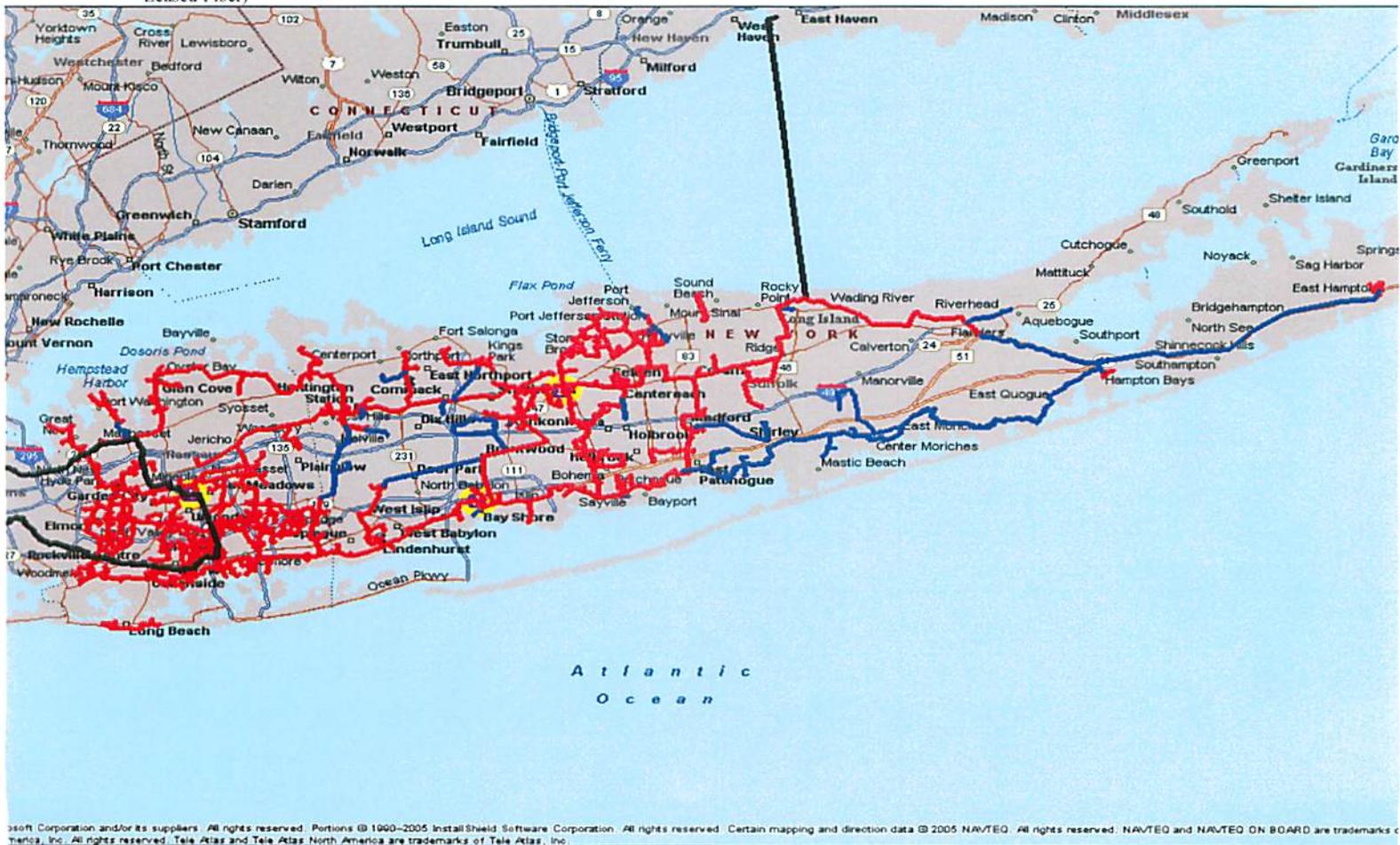
to sell dedicated Ethernet, Fast Ethernet and Gigabit Ethernet offerings. Upstream Internet connectivity is provided via redundant connections at Garden City and 60 Hudson in NYC with total capacity of 3.1 Gbps. A network diagram is provided at the end of this summary.

The LIFE network continues to expand as new on-net locations are connected. In 2010, LIFE plans on purchasing a dark fiber ring from Garden City to Manhattan to replace its existing leased circuits. This will allow LIFE to more effectively sell to carrier and enterprise customers who require connectivity from Long Island to New York City.

LIFE is currently designing and planning on deploying Dense Wavelength Division Multiplexing (DWDM) gear to increase bandwidth over its existing fiber optic backbones. This DWDM solution will allow LIFE to offer higher-end transport services (e.g., 2.5G and 10G waves) to customers needing increased broadband capacity.

In Westchester, LIFE is seeking to build a dark fiber network throughout the southern half of the county, including the cities of White Plains and New Rochelle and the towns of Scarsdale, Rye, Harrison, Greenburgh and Mamaroneck.

LIFE's Long Island Fiber Network: (Red Lines - Fiber in Place, Blue Lines - Fiber being built or to be Built, Black Lines - Leased Fiber)



Products and Services: The Company began as a provider of dark fiber services to school districts and municipal customers. As revenues and cash flow grew, the Company added additional services to better meet the demands of its customer base. Today, LIFE provides a wide variety of lit and dark fiber services as well as a complement of value added services that enhance the attractiveness of its core network offerings. LIFE's success stems from its focus and attention to customer demand and listening to the needs of its customers. LIFE continues to invest in infrastructure in order to expand its network and product offering with new capabilities and technologies.

LIFE's product portfolio includes the following services:

- **Fiber Optic Network Services.** LIFE's extensive fiber footprint enables it to provide a wide array of lit and dark fiber network solutions custom tailored to its customers' needs. For Dark Fiber, LIFE provides dedicated, secure physical paths in either ring or point to point topologies. For lit services, LIFE provides point to point or Wide Area Network (WAN) configurations that scale from 10 MEG to 1 Gigabit. These private networks can also access LIFE's High Speed Internet offerings and value added services.
- **High Speed Internet Services.** LIFE is a full service ISP with redundant Tier 1 Internet connections in physically diverse locations. LIFE provides Internet connectivity directly on its proven all fiber infrastructures resulting in enhanced speed and reliability. Internet speeds from 10MG to 1GIG are available on the LIFE network.
- **Managed Network Services.** LIFE's network infrastructure enables it to layer a suite of network management, security and monitoring services directly on top of its fiber and Internet solutions. Customer can choose to have LIFE monitor critical network end points, provide centralized or edge firewall solutions or select outsourced network management solutions.
- **Data Center and Collocation.** LIFE's Collocation center in Nesconset, NY offers customers a fully redundant, reliable and secure space to locate critical network equipment for back-up, redundancy, or disaster recovery. The Nesconset Data Center is connected to dual physically diverse fiber entrances and has UPS and generator protected power. Because customer locations and the datacenter ride the same LIFE fiber network, network latency is minimized resulting in superior application performance.

Customer Profile: LIFE focuses on providing high capacity fiber solutions to communication intensive customers such as School Districts, Universities, Municipalities, Businesses, Hospitals, Libraries and Police/Fire Departments. LIFE provides its customers the ability to obtain advanced, yet affordable telecommunications solutions designed to meet their specific technological and financial requirements. Every network is custom designed by LIFE network engineers in consultation with the customer. Because of the mission critical nature of the services and high degree of customization, customers typically request 5-10 year contracts.

LIFE has a diverse base of approximately 220 total customers in five major verticals:

- Education (School Districts, Universities, Libraries) (74%)
- Government (Court Systems, Counties, Townships) (18%)

- Healthcare (Hospitals, Clinics) (4%)
- Enterprise (3%)
- Carrier (1%)

LIFE's robust fiber network and strong customer care and support is evidenced by its industry leading churn metrics. As of December, 2009, LIFE has experienced only 3 customer disconnections.

LIFE has many high-profile customers under contract and in discussions with many others including; Nassau and Suffolk County Government and Police Departments, New York State Court System, Stony Brook University and Hospital, The Towns of Oyster Bay, North Hempstead, Hempstead, Islip, Brookhaven and local Fire Departments.

Strategy & Growth Plans: LIFE's strategy is to drive revenue growth, maintain profit margins and increase long term value by expanding the fiber network. The Company intends to pursue the following initiatives as the primary drivers of future growth:

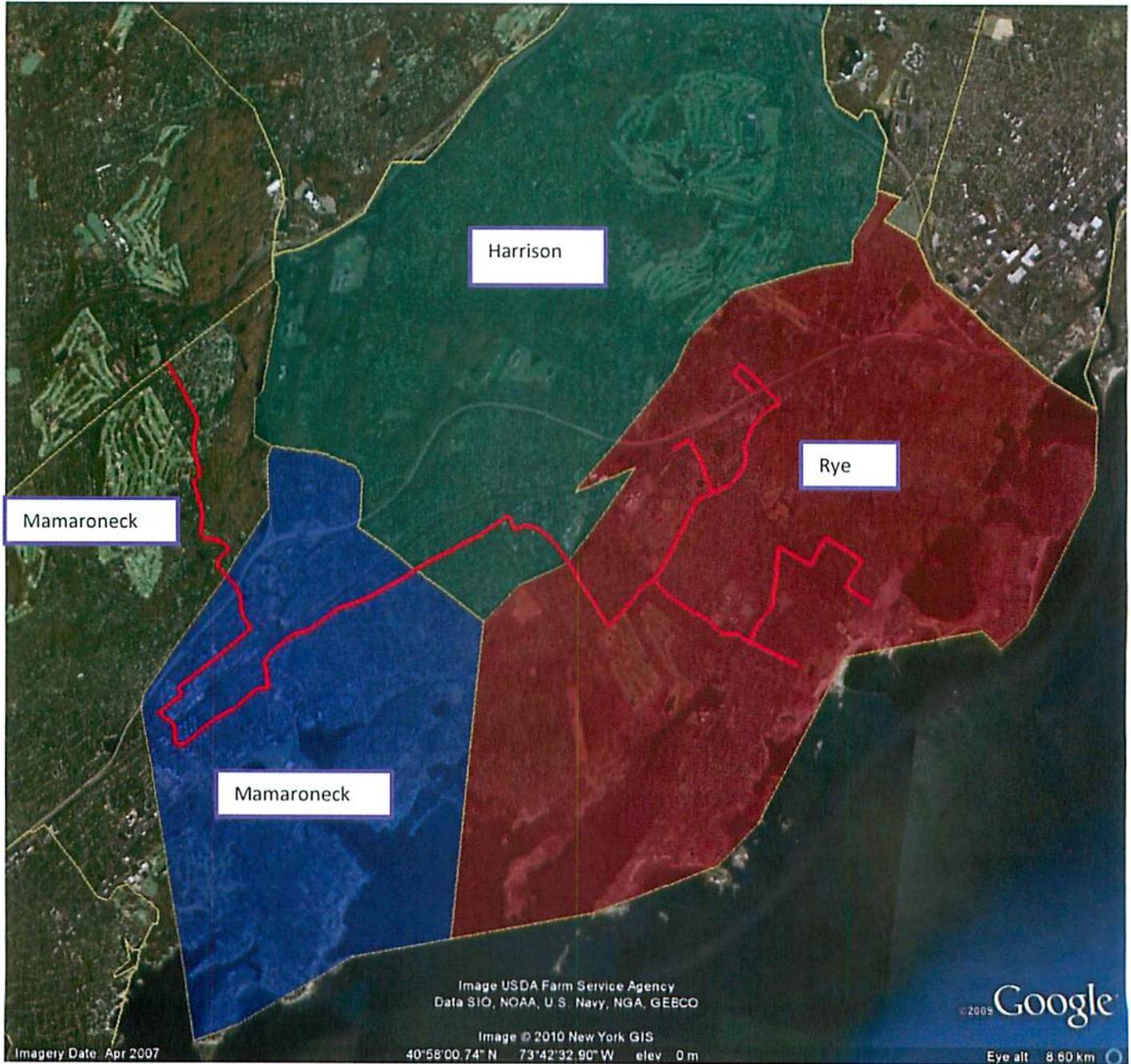
- Continued Focus on School, Library, University and Municipal Markets. LIFE is the dominant provider of fiber based solutions to school districts on Nassau and Suffolk Counties. LIFE has over 40 school districts in Nassau and 30 school districts in Suffolk County under contract. LIFE also has 13 municipal customers such as Town of Islip, Town of North Hempstead and New York State Courts.
- Focus on Near-net Buildings. LIFE has yet to meaningfully target enterprise customers. As mentioned previously, in building out the network for its early customers, LIFE planned network routes to pass as many multi-tenant office buildings as feasible. LIFE estimated there are an additional 10,000 building locations on or close to net with a 10% penetration rate resulting in 1,000 buildings requiring connectivity within its existing territory representing over \$2,800,000 of new monthly recurring revenue. Of these 10,000 an estimated 2,500 large office buildings are within lateral proximity to LIFE fiber cables.
- Expand Fiber Network to NYC and Westchester. The LIFE network currently extends into New York City via leased circuits. To date, LIFE has focused on selling solutions that connect locations within Nassau and Suffolk County. A huge market opportunity exists to provide connectivity solutions to customers that require bandwidth in/out of New York City. LIFE intends to purchase a dark fiber ring to interconnect the LIFE network on Long Island with multiple carrier POPs in NYC.

LIFE also has access to a fiber optic cable that crosses the Long Island Sound (shown above on the network map). This cable access represents a significant opportunity to connect large customers located on Long Island to diverse carriers without traveling through New York City.

Ownership and Capitalization: Management owns over 85% of the equity in the company. The Company has predominately grown via internally generated cash flow and equity provided by the founders. In 2006 the company raised \$2,000,000 of debt to fund network construction. An additional \$2,000,000 in debt was obtained in March of 2008.

City and Town of Rye
Map 1 (#3), (#5)

Long Island Fiber Exchange Proposed Fiber Routes





CITY COUNCIL AGENDA

NO. 14

DEPT.: City Manager's Office

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

ACTION: Resolution authorizing the City Manager to enter into a contract with the County of Westchester for Snow and Ice Removal on County Roads for the period from October 1, 2010 through September 30, 2015.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

That the Mayor and Council Approve this Agreement.

IMPACT: Environmental Fiscal Neighborhood Other: The Agreement provides financial reimbursement to the City for the removal of snow and ice from designated County roads within the Municipality.

BACKGROUND: The previous Agreement with Westchester County expired September 30, 2010. The Agreement includes CPI escalators each year, and has already been approved by the Westchester County Board of Legislators.

A copy of the Agreement is attached.

THIS AGREEMENT made the _____ day of _____ 2010 by and between

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

and

THE CITY OF RYE, a municipal corporation of the State of New York, having offices at City Hall – 2nd Floor, Rye, New York 10580 (hereinafter referred to as the "Municipality")

WITNESSETH:

WHEREAS, the County desires to obtain services for the removal of snow and ice from designated County roads within the Municipality to provide for reasonable passage and movement of vehicles over such roads; and

WHEREAS, the Municipality is willing to furnish such services and the County desires to purchase same subject to the terms of the Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and covenants hereinafter set forth, the parties agree as follows:

FIRST: This Agreement shall commence on October 1, 2010 and shall expire on September 30, 2015 unless sooner terminated as herein provided.

SECOND: The Municipality agrees to furnish all necessary personnel, machinery, tools, supplies and equipment to provide snow removal and ice control services upon County roads within the boundaries of the Municipality as identified in the list attached hereto and made a part hereof as Schedule "D". Said services shall be provided upon the paved portions of County roads as well as County road bridges and bridge sidewalks and shall include the plowing or removal of snow and ice, all necessary sanding, and appropriate measures to keep catch basins and drains clear of ice and debris, until the end of the snow removal season.

All work shall be performed in the manner prescribed by the Westchester County Commissioner of Public Works ("Commissioner") or his authorized representative and shall be completed to his satisfaction.

THIRD: For the services performed pursuant to Paragraph **SECOND** above, the County shall pay the Municipality as follows:

(i) At such time as the Municipality's salt storage and application rates shall be in compliance with the recommendations of the 208 Water Quality Program, as described in the "Best Management Practices Manual" published as part of that Program as amended or supplemented, then payment shall be provided in accordance with the rates set forth in Schedule "B" for those seasons the municipality is in compliance.

(ii) In the event the Municipality shall not be in compliance with the 208 Water Quality Program "Best Management Practices Manual" as amended or supplemented or, if in compliance, shall fail to so comply during the term of this Agreement, then the Municipality shall be entitled to payment only for the actual amounts expended to provide snow and ice removal services up to the maximum rates set forth in Schedule "A".

(iii) Schedule "D" will be modified to add and/or delete roads, or sections of roads, as they may be added to and/or deleted from the County road system. Such addition and/or deletion may only take place upon the completion of action by the Westchester County Board of Legislators.

Payments will be prorated to pay as follows:

	<u>Roads Added</u>	<u>Roads Deleted</u>
November	90%	10%
December	80%	20%
January	60%	40%
February	30%	70%
March	10%	90%

(iv) During the period October 1, 2011 through September 30, 2012 the amount payable to the Municipality for said period shall be increased by the percentage, if any, that the Consumer Price Index ("C.P.I.") in the month of June, 2011 has increased over the C.P.I. in the month of June, 2010. For the next period (October 1, 2012 through September 30, 2013) the

2011-2012 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2012 over the month of June, 2011. For the next period (October 1, 2013 through September 30, 2014) the 2012-2013 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2013 over the month of June, 2012. For the next period (October 1, 2014 through September 30, 2015) the 2013-2014 rate schedule shall be increased based on the increase in the C.P.I. in the month of June, 2014 over the month of June, 2013. In no event, however, shall the increase in the amount payable by the County for the services rendered hereunder exceed three and one half percent (3 ½%) in any year of the Agreement over the preceding year's amount.

In the event the C.P.I. decreases during any one (1) year term of this Agreement, the amount payable by the County shall decrease accordingly, but in no event shall the amount payable decrease below the amount payable during the first one (1) year term of this contract.

For the purpose of this paragraph, the C.P.I. shall mean the Consumer Price Index for all Urban Consumers, all items, Selected Large Cities, for New York, Northeastern New Jersey Area as published by the United States Department of Labor, Bureau of Labor Statistics, Washington, D.C. as the "Consumer Price Index for all Urban Consumers" (CPI-U) 1982-84 base = 100.

If the Federal government shall cease to publish such index, then the substitute index published shall be used for the purpose of adjusting the amount payable to the Municipality.

FOURTH: Any and all requests for payment to be made shall be submitted within thirty (30) days after notice by the Department of Public Works, on a properly executed claim form together with an itemized schedule of amounts expended to furnish such services. Payment shall be made only after approval by the Commissioner.

This Agreement shall be deemed executory only to the extent of money appropriated and allocated by the County for the performance of the terms hereof and no liability under this Agreement shall be incurred by the County beyond moneys available for the purposes thereof.

FIFTH: The Municipality shall keep accurate records of its business operations hereunder in accordance with generally accepted accounting principles.

The Commissioner, or his duly authorized representative, shall have the right to inspect and audit such records and statements at all reasonable times to insure that the Municipality is complying with the terms of this Agreement. To the extent practicable such inspections shall take place at the offices of the Municipality. The Municipality agrees that all equipment charges shall be in accordance with rates established by the New York State Department of Transportation and all labor charges shall be in accordance with the prevailing rates within the Municipality for similar highway work.

SIXTH: The parties recognize and acknowledge that the obligations of the County under this Agreement are subject to annual appropriations by its Board of Legislators pursuant to the Laws of Westchester County. Therefore, this Agreement shall be deemed executory only to the extent of the moneys appropriated and available. The County shall have no liability under this Agreement beyond funds appropriated and available for payment pursuant to this Agreement. The parties understand and intend that the obligation of the County hereunder shall constitute a current expense of the County and shall not in any way be construed to be a debt of the County in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the County, nor shall anything contained in this Agreement constitute a pledge of the general tax revenues, funds or moneys of the County. The County shall pay amounts due under this Agreement exclusively from legally available funds appropriated for this purpose. The County shall retain the right, upon the occurrence of the adoption of any County Budget by its Board of Legislators during the term of this Agreement or any amendments thereto, and for a reasonable period of time after such adoption(s), to conduct an analysis of the impacts of any such County Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates set forth herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

This Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a

proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Municipality, then the Municipality shall have the right to terminate this Agreement upon reasonable prior written notice.

SEVENTH: The County, upon thirty (30) days written notice to the Municipality, may terminate this Agreement in whole or in part when the County deems it is in its best interest. Subject to the availability of funds, the Municipality shall be compensated for services rendered under this Agreement prior to the effective date of such termination.

In the event the Commissioner determines that there has been a material breach by the Municipality of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Municipality of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the services provided for in this Agreement, or contract for their completion, and any additional expense or cost of such completion shall be charged to and paid by the Municipality. Notice shall be effective on the date of receipt. Without limiting the foregoing, upon written notice to the Municipality, repeated breaches by Municipality of any particular duty or obligation under this Agreement shall be deemed a material breach of the Agreement justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective on the date of receipt.

EIGHTH: Except in an emergency, the Municipality shall not assign, sublet, subcontract or otherwise dispose of this Agreement, or any right, duty or interest herein, without previous written consent of the County. No assignment, subcontracting, subletting or other such disposition of this Agreement, either with or without such consent of the County, shall serve to relieve the Municipality of its obligations hereunder.

All subcontracts entered into by the Municipality shall provide that subcontractors are subject to and must comply with all terms and conditions set forth in this Agreement. All work performed by the subcontractor shall be deemed work performed by the Municipality.

NINTH: The Municipality shall comply with all applicable federal, state and local laws, rules and regulations including, but not limited to, all applicable provisions of the Labor Law, Workers' Compensation Law, State Unemployment Insurance Law, Federal Social Security Law and any and all rules and regulations promulgated by the United States Department of Labor and/or the Industrial Commissioner of the State of New York and all amendments and additions thereto.

TENTH: The Municipality hereby acknowledges and agrees:

(a) that in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no Municipality, subcontractor, nor any person acting on behalf of such Municipality or subcontractor, shall by reason of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic pre-disposition or carrier status, discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) that no Municipality, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, religion, gender, age, ethnicity, disability, sex, alienage or citizenship status, national origin, marital status, sexual orientation, familial status, genetic pre-disposition or carrier status;

(c) that there may be deducted from the amount payable to the Municipality by the County under this Agreement a penalty of FIFTY (\$50.00) DOLLARS for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement;

(d) that this Agreement may be cancelled or terminated by the County, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms and conditions of this section of the Agreement; and

(e) the aforesaid provisions of this section covering every agreement for or on behalf of the County for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

ELEVENTH: The Municipality, in its own name and naming the County as an additional named insured, shall, at the commencement of the term hereof, obtain and maintain in continuous effect for the term of this Agreement, policies of insurance providing for coverage in the limits and subject to the conditions set forth in Schedule "C", attached hereto and made a part hereof.

The Municipality agrees to indemnify, defend and hold the County of Westchester and its officers, employees and agents harmless from and against any and all liability, loss, damage or expense the County may suffer as a result of any and all claims, demands, causes of action or judgments arising out of this Agreement due to the negligent acts or omissions of the Municipality.

The Municipality shall, within ten (10) days of the occurrence thereof, notify the Commissioner of any action, proceeding, claim or demand arising hereunder.

TWELFTH: All notices of any nature referred to in this Agreement shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by overnight courier), to the respective addresses as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner
Westchester County Department of Public Works
Michaelian Office Building
148 Martine Avenue, Room 518
White Plains, New York 10601

With a copy to:

County Attorney
Michaelian Office Building
148 Martine Avenue, Room 600
White Plains, New York 10601

To the Municipality:

City Clerk
City of Rye
City Hall – 2nd Floor
Rye, New York 10580

THIRTEENTH: VENDOR DIRECT PAYMENT: All payments made by the County to the Municipality will be made by electronic funds transfer (“EFT”) pursuant to the County’s Vendor Direct program. Municipalities doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form prior to receiving an award or purchase order. The EFT Authorization Form, Instructions and related information are annexed hereto as Schedule “E.” Payments will be automatically credited to the Municipality’s designated bank account at the Municipality’s financial institution. Payments are anticipated to be deposited two business days after the voucher/invoice is processed for payment. Saturdays, Sundays, and legal holidays are not considered business days. Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on County check stubs and will contain the date that the funds will be credited to your account. All information received will be treated and handled as strictly confidential. The completed Authorization Form must be returned by the Municipality to the County prior to award of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Finance Department. Any Municipality that fails to return the completed authorization form(s) prior to award of the contract may be considered non-responsive and the proposal may be rejected.

FOURTEENTH: The failure of either party to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or

relinquishment for the future of such term or condition, but the same shall remain in full force and effect. No waiver by either party or any provision hereof shall be implied.

FIFTEENTH: This Agreement shall bind the successors, assigns and representatives of the parties hereto.

SIXTEENTH: This Agreement and its attachments constitute the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. No change, modification or cancellation of this Agreement shall be effective except by an instrument in writing signed by a duly authorized representative of each of the parties.

SEVENTEENTH: This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

[REMAINING PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the County of Westchester and the Municipality have executed this Agreement.

THE COUNTY OF WESTCHESTER

By: _____
John J. Hsu, P.E.
Commissioner of Public Works

CITY OF RYE

By: _____
Name:
Title:

Authorized by the Westchester County Board of Legislators on the 8th day of November, 2010.

Authorized by the Westchester County Board of Acquisition and Contract on the ____ day of _____, 2010.

Approved as to form and
manner of execution

Assistant County Attorney
County of Westchester

MUNICIPALITY'S ACKNOWLEDGMENT

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

On this _____ day of _____, 20____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Date: _____

Notary Public

CERTIFICATE OF AUTHORITY
(Municipality)

I, _____
(Officer other than Officer signing agreement)

certify that I am the _____ of the _____
(Title) (Name of Municipality)

(the "Municipality"), a corporation duly organized and in good standing under the

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

named in the foregoing agreement that _____
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution
_____ of the Municipality, that said agreement
(Title of Person Executing Agreement)

was duly signed for on behalf of said Municipality by authority of its
_____ thereunto duly
(Town Board, Village Board, Town Council)

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

(Signature)

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

On this ____ day of _____, 20__, before me, the undersigned, personally appeared
_____, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the above certificate and
acknowledged to me that he/she executed the above certificate in his/her capacity as
_____ of _____,
(Title) (Municipality)
the municipal corporation described in and which executed the within instrument.

Notary Public

SCHEDULE "A"

Effective October 1, 2010

Without "208" Incentive

- \$2,061.00 per mile for 2 lane roads
- \$2,717.00 per mile for 3 lane roads
- \$3,004.00 per mile for 4 lane roads

SCHEDULE "B"

Effective October 1, 2010

With "208" Incentive

- \$3,092.00 per mile for 2 lane roads
- \$4,019.00 per mile for 3 lane roads
- \$4,500.00 per mile for 4 lane roads

SCHEDULE "C"

STANDARD INSURANCE PROVISIONS **(MUNICIPALITY)**

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

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

(a) Workers' Compensation. Certificate form C-105.2 (9/07) or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, the employer must complete NYS form CE-200, available to download at: www.web.state.ny.us (click on Employers/Businesses, then Business Permits/Licenses/Contracts to see instruction manual).

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

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.1), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

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

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

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

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

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

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

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

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

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

SCHEDULE "D"
COUNTY ROADS – SNOW AND ICE AGREEMENT

CITY OF RYE

C.R. NO.	COUNTY ROAD NAME	CTR- LINE MILES	2 LANE MILES	3 LANE MILES	4 LANE MILES
38	PARK AVENUE	0.40	0.00	0.00	0.40
54	THEODORE FREMD & WAPPANOCA	1.72	0.00	1.50	0.22
54C	RIDGE STREET	0.20	0.00	0.00	0.20
72	MIDLAND AVENUE	1.76	0.00	1.00	0.76
73	NO. ST.,OLD POST RD.,HAMMOND RD	1.28	0.00	0.85	0.43
147	PLAYLAND ACCESS	0.31	0.31	0.00	0.00
148	THRUWAY ACCESS	0.15	0.15	0.00	0.00
152	PLAYLAND PARKWAY	<u>1.14</u>	<u>0.00</u>	<u>0.00</u>	<u>1.14</u>
TOTAL MILEAGE – RYE		6.96	0.46	3.35	3.15

SCHEDULE "E"

Westchester County Vendor Direct Program Frequently Asked Questions

1. WHAT ARE THE BENEFITS OF THE ELECTRONIC FUNDS TRANSFER (EFT) ASSOCIATED WITH THE VENDOR DIRECT PROGRAM?

There are several advantages to having your payments automatically deposited into your designated bank account via EFT:

Payments are secure – Paper checks can be lost in the mail or stolen, but money deposited directly into your bank account is more secure.

You save time – Money deposited into your bank account is automatic. You save the time of preparing and delivering the deposit to the bank. Additionally, the funds are immediately available to you.

2. ARE MY PAYMENTS GOING TO BE PROCESSED ON THE SAME SCHEDULE AS THEY WERE BEFORE VENDOR DIRECT?

Yes.

3. HOW QUICKLY WILL A PAYMENT BE DEPOSITED INTO MY ACCOUNT?

Payments are deposited two business days after the voucher/invoice is processed. Saturdays, Sundays, and legal holidays are not considered business days.

4. HOW WILL I KNOW WHEN THE PAYMENT IS IN MY BANK ACCOUNT AND WHAT IT IS FOR?

Under the Vendor Direct program you will receive an e-mail notification two days prior to the day the payment will be credited to your designated account. The e-mail notification will come in the form of a remittance advice with the same information that currently appears on your check stub, and will contain the date that the funds will be credited to your account.

5. WHAT IF THERE IS A DISCREPANCY IN THE AMOUNT RECEIVED?

Please contact your Westchester County representative as you would have in the past if there were a discrepancy on a check received.

6. WHAT IF I DO NOT RECEIVE THE MONEY IN MY DESIGNATED BANK ACCOUNT ON THE DATE INDICATED IN THE E-MAIL?

In the unlikely event that this occurs, please contact the Westchester County Accounts Payable Department at 914-995-4708.

7. WHAT MUST I DO IF I CHANGE MY BANK OR MY ACCOUNT NUMBER?

Whenever you change any information or close your account a new Vendor Direct Payment Authorization Form must be submitted. Please contact the Westchester County Accounts Payable Department at 914-995-4708 and we will e-mail you a new form.

8. WHEN COMPLETING THE PAYMENT AUTHORIZATION FORM, WHY MUST I HAVE IT SIGNED BY A BANK OFFICIAL IF I DON'T INCLUDE A VOIDED CHECK?

This is to ensure the authenticity of the account being set up to receive your payments.



Authorization is: (check one)

- New
- Change
- No Change

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

INSTRUCTIONS: Please complete both sections of this Authorization form and attach a voided check. See the reverse for more information and instructions. If you previously submitted this form and there is no change to the information previously submitted, ONLY complete lines 1 through 6 of section 1.

Section I - Vendor Information

1. Vendor Name:		
2. Taxpayer ID Number or Social Security Number:		
3. Vendor Primary Address		
4. Contact Person Name:		Contact Person Telephone Number:
5. Vendor E-Mail Addresses for Remittance Notification:		
6. Vendor Certification: <i>I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment. In the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.</i>		
_____ Authorized Signature	_____ Print Name/Title	_____ Date

Section II - Financial Institution Information

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

(Leave Blank - to be completed by Westchester County) - Vendor number assigned

| | | | |

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

GENERAL INSTRUCTIONS

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

Section I - VENDOR INFORMATION

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

Section II - FINANCIAL INSTITUTION INFORMATION

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



CITY COUNCIL AGENDA

NO. 15

DEPT.: City Manager

DATE: December 1, 2010

CONTACT: Scott D. Pickup, City Manager

AGENDA ITEM: Resolution to declare certain City of Rye equipment as surplus.

FOR THE MEETING OF:

December 1, 2010

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council adopt the following resolution:

Whereas, the City has been provided with a list of Fire equipment identified as being obsolete or will become obsolete during 2010, and,

Whereas, the Fire Department has recommended that said equipment be declared surplus, now, therefore, be it

Resolved that said equipment are declared surplus, and, be it further

Resolved, that authorization is given to the City Comptroller to donate said equipment in a manner that will serve in the best interests of the City.

IMPACT: Environmental Fiscal Neighborhood Other

BACKGROUND: The Fire Department has declared the following equipment as either currently obsolete or will become obsolete during calendar year 2010: 1982 Hahn Fire Pumper

The fire truck will be donated to Westchester County to be used in their Fire training program.