



## AGENDA July 3, 2023

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### I. OPEN MEETING

### II. NEW BUSINESS

- Approve Resolution of Reaffirmation of Determination of Non-Significance (Negative Declaration) in Light of Revision to Project Plans – Village of Pawling Water Supply Project – Lower Baxter.
- Approve MTA Trunk Sewer Replacement Project WIIA Authorizing Resolution for grant application.
- Appoint Ethics Board representative.
- Approve MTA Memorandum of Understanding for Corbin Road crossing.
- Approve MTA Memorandum of Understanding for Main Street and South Street pedestrian crossings.
- Introduction of Cable Franchise Renewal Agreement and schedule Public Hearing.
- Discuss clothing allowance for highway department.
- Approve Village Green and Public Assembly Events Permit Application for the Pawling Resource Center to hold its Annual Walkathon on September 16, 2023.
- Discuss use of Chamber of Commerce public bathroom.

### III. OLD BUSINESS

- Engineer's Report

### IV. MOTION TO PAY BILLS

- May bills in the amount of \$69,897.36

### V. ADJOURNMENT

### VI. EXECUTIVE SESSION - Litigation

**Village of Pawling**  
**New York State Environmental Quality Review Act (SEQRA)**  
**Reaffirmation of Determination of Non-Significance (Negative Declaration) In Light of Revision to Project Plans**  
**Village of Pawling Water Supply Project - Lower Baxter**

**WHEREAS**, the Village of Pawling proposes a revision to project plans associated with the previously approved development of five water supply wells, a water treatment facility, and related utility line infrastructure on the Village's Water Supply lands at 50 Tyrell Road on Tax Parcel No. 6957-20-904187-0000 with remaining utility line infrastructure constructed at 50 Tyrell Road to make a connection through two parcels (134001-6957-16-937250-0000 and 134001-6957-16-868317-0000) and the New York State Electric and Gas Corporation (NYSEG) transmission corridor (by easement) to Grandview Avenue. The proposed project plan changes are: A) installing a new well BG-9 with an 8" casing immediately to supplement (and immediately adjacent to ) existing well BG-4; B) removing 53 trees rather than 49 trees; C) Increasing the fill footprint from 0.31 acre (1,034 CY fill) to 0.41 acre (2,048 cy fill); and D) allowing for a combined pumping withdrawal rate of 95 GPM from wells BG-4 and BG-9 in combination rather than from well BG-4 alone.

**WHEREAS**, the proposed project and system improvements were classified as an Unlisted Action under the NYS Environmental Quality Review Act (hereinafter "SEQRA") and the Village conducted a detailed and comprehensive environmental review of the project as a coordinated action, including preparation of a Full Environmental Assessment Form (EAF) and completed a SEQRA Evaluation including evaluation of the magnitude and importance of project impacts.

**WHEREAS**, the Village concluded its environmental review by adopting a SEQRA Negative Declaration and Notice of Non-Significance on April 4, 2022.

**WHEREAS**, the Village Board of Trustees reviewed the previous EAF along with the planned changes, and the proposed changes do not introduce any new impacts not previously evaluated.

**NOW, THEREFORE, BE IT RESOLVED** that, through a review of the previously completed Environmental Assessment Form, a review of the proposed changes, and consideration of the criteria in 6 NYCRR § 617.7(c), the Village Board of Trustees concludes the action and changes will not have a significant adverse impact on the environment and hereby reaffirms its SEQRA Negative Declaration, and

IT IS FURTHER RESOLVED, that this reaffirmation will be filed with all appropriate parties in accordance with 6 NYCRR § 617.12.

Yea    Nay

Lauri Taylor, Mayor	_____	_____
John Burweger, Trustee	_____	_____
Jerry Locascio, Trustee	_____	_____
Art Guzzo, Trustee	_____	_____
Stephen Pezzella, Trustee	_____	_____

Date: July 3, 2023

Village of Pawling Village Board of Trustees

9 Memorial Ave,  
Pawling, New York 12564

Telephone: 845-855-1122

Contact: Jennifer Osborn, Village Clerk

Date: July 3, 2023

**Full Environmental Assessment Form**  
**Part 3 - Evaluation of the Magnitude and Importance of Project Impacts**  
**and**  
**Determination of Significance**

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

**Reasons Supporting This Determination:**

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

See Negative Declaration

**Determination of Significance - Type 1 and Unlisted Actions**

SEQR Status:  Type 1  Unlisted

Identify portions of EAF completed for this Project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information

None

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the Village of Pawling \_\_\_\_\_ as lead agency that:

A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: Unlisted

Name of Lead Agency: Village of Pawling

Name of Responsible Officer in Lead Agency: Lauri Taylor

Title of Responsible Officer: Mayor of the Village of Pawling

Signature of Responsible Officer in Lead Agency: 

Date: 4/4/2022

Signature of Preparer (if different from Responsible Officer) 

Caren LoBrutto, LaBella Ass.

Date: 4/4/2022

**For Further Information:**

Contact Person: Jennifer Osborn, Village Clerk

Address: 9 Memorial Avenue, Village of Pawling, NY 12564

Telephone Number: 845-855-1122

E-mail: josborn@villageofpawling.org

**For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:**

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)

Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

**PRINT FULL FORM**

**State Environmental Quality Review  
NEGATIVE DECLARATION  
Notice of Determination of Non-Significance**

Date: April 4, 2022

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

The Village of Pawling Board of Trustees as Lead Agency has determined that the proposed action described below will not have a significant adverse environmental impact and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** Village of Pawling Water Supply Project - Lower Baxter

**SEQR Status:** Unlisted Action

**Conditioned Negative Declaration:** No

**Location of Action:** 50 Tyrell Road, Village of Pawling, Dutchess County, NY (Tax Map Parcels 134001-6957-20-904187-0000; 134001-6957-16-937250-0000 and 134001-6957-16-868317-0000)

**Description of Action:**

The Applicant, the Village of Pawling, is proposing to develop five water supply wells, a water treatment facility, and related utility line infrastructure on the Village's Water Supply lands. Five new water wells will be put into operation and a treatment facility with an EMC generator will be constructed at 50 Tyrell Road on Tax Parcel No. 6957-20-904187-0000. The remaining utility line infrastructure will be constructed at 50 Tyrell Road to make a connection through two parcels (134001-6957-16-937250-0000 and 134001-6957-16-868317-0000) and the New York State Electric and Gas Corporation (NYSEG) transmission corridor (by easement) to Grandview Avenue.

The 50 Tyrell Road parcel is currently occupied by three existing and operational bedrock wells (known as the Baxter wells), existing test wells (whose permanent operation is part of this environmental analysis), existing Baxter Green Water Treatment Plant and associated structures, successional forest and wetland area. This parcel abuts the Baxter Road residential subdivision to the west, NYS Electric and Gas (NYSEG) right-of-way (ROW) to the northwest, Village water supply land (134001-6957-16-937250-0000) to the northeast (through which the water line will connect), residential development to the east and south, with some undeveloped area.

The proposed wells will be added to the Village's water supply system for which additional ground water supply is urgently needed pursuant to the terms of the Consent Order between the Dutchess County Department of Health and the Village. These wells will increase source capacity to enable the water supply system to sufficiently meet maximum daily demand. The new wells are proposed to operate in conjunction with the Umscheid water wells (located northwest of the site on parcel 134001-6957-16-868317-0000). With the Lower Baxter wells operational in conjunction with the Umscheid water wells, the maximum daily flow from the water treatment plant will be 432,000 gallons per day. Together, the addition of the Umscheid and Lower Baxter wells as new sources will bring the Village's source capacity

into full compliance with 10NYSRR5-1 and fulfill the Village's obligations under the terms of the Consent Order.

To facilitate the project, the Village is seeking approval from the NYS Department of Health (NYSDOH) and Dutchess County (DCDOH), financing and bonding approval from the Village of Pawling Board of Trustees, and a water withdrawal permit and wetland permit (permanent operation of the test wells and installation of a water line) from the NYS Department of Environmental Conservation (NYSDEC). No change in access is proposed.

#### **Approvals and Permits:**

- Village of Pawling Board of Trustees Financing and Bonding Approval
- Dutchess County Department of Health (DCDOH) Water Treatment Approval
- NYS Department of Environmental Conservation (NYSDEC) Water Withdrawal Permit and Wetland Permit
- NYS Department of Health (NYSDOH) Water Treatment Approval and Design
- NYS Office of Parks, Recreation and Historic Preservation (NYSOPRHP) Approval – 'Letter of No Effect' received on March 17, 2022

**List of Involved Agencies: Village of Pawling Board of Trustees, DCDOH, NYSDOH, and NYSDEC Region 3**

#### **Reasons Supporting This Determination:**

A Part 1 Full Environmental Assessment Form was prepared for the project on February 7, 2022 and was circulated by the Lead Agency on February 8, 2022. Assessments of the potential impacts resulting from the proposed action which supported the Environmental Assessment Form findings included the following documents:

- New Well Identification Map, February 8, 2022
- Phase I Bog Turtle Habitat Survey Report, January 2022
- U.S. Fish & Wildlife Service Information for Planning and Consultation (IPaC) Informal Report, February 1, 2022
- NYSDEC Article 24 Application for Test Well Installation – Pawling Water Supply Project, December 17, 2021
- Pumping Test Protocol Memorandum, January 11, 2022
- Additional Water Source Assessment – Baxter Lower-Level Property, September 14, 2021
- Pumping Test Overview Summary, March 24, 2022
- NYSOPRHP Letter of No Effect, March 17, 2022
- Full Environmental Assessment Form (FEAF), Part 1, dated February 7, 2022

The Lead Agency conducted its own independent review and analysis of the information provided and the potential environmental effects.

### **1.0 IMPACT ON LAND**

The project site is comprised of Tax Parcel No. 6957-20-904187-0000 comprising 19.28-acres and a portion of tax parcels 134001-6957-16-937250-0000 and 134001-6957-16-868317-0000 for a total of 19.41 acres (Project Area). The total physical ground disturbance is estimated at less than one acre.

The following table provides the soil characteristics for each soil type expected to be found on the project site, according to Geographic Information Systems (GIS) information and the USDA Natural Resources Conservation Service website.

SOIL SYMBOL	SOIL TYPE	SLOPES	DRAINAGE	DEPTH TO WATER TABLE (IN)	DEPTH TO BEDROCK (IN)
FcD	Farmington-Galway complex, hilly, very rocky	15-30%	Somewhat excessively drained and well drained	> 80	10-40
Wy	Wayland silt loam	0-3%	Poorly drained	0	> 80

The installation of the utility line infrastructure and water treatment facility are not anticipated to require removal of bedrock based on soil borings. Grading is limited to restoring grade to the existing grade, with no increase in slopes. If water is encountered at depths less than three feet, then accepted construction practices will be employed alleviate problems associated with a high water table condition. Erosion and sediment control practices will be in place and implemented as needed during construction.

Based on this information, the Project will not result in any significant adverse impacts related to soils.

## 2.0 IMPACT ON SURFACE WATER

According to NYSDEC EAF Mapper, available GIS mapping, and the NYSDEC Environmental Resource Map, the Project Area contains a NYSDEC Mapped Class/Standard C(T) stream, a NYSDEC mapped wetland (Wetland DP-22, Class 1), federally regulated wetlands, and a 100-year floodplain area. The stream is located in the northeastern portion of the Project Area and the wetlands surround the stream on both sides.

The proposed project will not disturb the stream and no permits related to the stream are required. The proposed project will require a freshwater wetland permit (Article 24) from the NYSDEC due to installation of the new waterline and the permanent operation of the five wells within the wetland adjacent area. The waterline will be horizontally drilled avoiding direct impacts to the wetland.

Consistent with a pumping test protocol reviewed and approved for the Lower Baxter site by both the New York State Department of Environmental Conservation and the Dutchess County Department of Health, LaBella Associates managed an extended test wellfield evaluation from mid-February into March of 2022. Flow statistics for the streams passing the new Lower Baxter wells using a USGS Stream Stats, indicates that flows passing the site exceed 0.452 cfs/sec (207 gpm) at a 95% frequency and 0.249 cfs/sec (110 gpm) at a 99% frequency. The UGSS software therefore suggests the proposed Lower Baxter well withdrawals can be fully satisfied by stream flows with a 95% frequency or more. During the driest periods (5% of less of total time), the standing surface water observed adjacent to the test wellfield and the groundwater stored in the sediments filling the basin



are expected to satisfy the wells until resumed rainfall restores both the stored groundwater and stream flows.

According to LaBella's Pumping Test Overview memorandum on March 24, 2022, the Lower Baxter site is able to reliably support well yields up to 210 gpm, and that during a majority of time there will be no change to water levels in the adjoining DP-22 wetland hydrology. The memorandum states there will be times when stream flow is less than the well withdrawal rates, occurring less than 5% of the time, and during those times, surface water levels may decline slowly in portions of wetland DP-22 adjacent to the wells. No significant adverse environmental impacts are expected since many wetlands lose full saturation from time to time so short-term water level declines are not unusual for wetlands.

The wellhead design of the test wells is designed to withstand flooding impacts and no adverse effect on the wells' water quality or capacity is anticipated to occur. The treatment facility will be constructed outside of the floodplain. The installation of the utilities and related grading will have a de minimis effect on the floodplain's storage capacity.

The Great Swamp Critical Environmental Area (CEA) occupies a portion of the Project Area and is generally coterminous with the boundaries of NYSDEC-mapped Wetland DP-22 within the Project Area. The Great Swamp CEA covers approximately 6,000 acres of eastern Putnam and Dutchess Counties and was designated in 1992 because of its "benefit to human health."

To secure additional water supply for the Village pursuant to the Consent Order with DCDOH, the proposed project will be undertaken with minimal disturbance to freshwater wetlands. The Village is currently coordinating with NYSDEC on wetland permits. Accordingly, no significant adverse impacts to surface waters or the CEA will occur.

### **3.0 IMPACT ON GROUNDWATER**

The proposed action involves the creation of five new water supply wells for the creation of a new potable water supply. The wells will be installed and connected to the Village of Pawling water system to serve water demand within the Village. The proposed wells will be added to the Village's water supply system for which additional ground water supply is urgently needed pursuant to the terms of the Consent Order between the Dutchess County Department of Health and the Village. These wells will increase source capacity to enable the water supply system to sufficiently meet maximum daily demand. The new wells are proposed to operate in conjunction with the Umscheid water wells (located northwest of the site on parcel 134001-6957-16-868317-0000). With the Lower Baxter wells operational in conjunction with the Umscheid water wells, the maximum daily flow from the water treatment plant will be 432,000 gallons per day.

The approximate well locations were approved by the Dutchess County Department of Behavioral and Community Health, and pumping test protocols were accepted by Dutchess County and approved by the NYSDEC. Water quality analyses from preliminary tests in the summer of 2021 for all NYSDOH 10NYCRR5-1 parameters for community water supply wells indicated that the water is of good quality, requiring routine disinfection. Those initial tests also provided data demonstrating that the water quality is not directly influenced by surface water quality from the nearby stream or wetlands, however, a final determination on this issue will be made at a later date by the NYSDOH. Groundwater withdrawal capacity has been tested and shown to impose no significant adverse impacts to the area aquifer, aquatic resources, or domestic wells.

No significant adverse impacts will occur to groundwater resources as a result of the proposed project.

#### **4.0 IMPACT ON FLOODING**

The proposed development will take place in the 100- and 500-year floodplain, where the wells are located in the 100-year floodplain and the utility conduits are located in the 100- and 500-year floodplain; however, no development will take place in a floodway. The well casings will be extended to be 3 feet above the 500-year floodplain elevation to prevent the well water quality from being impacted by a flood event, and the utilities will be installed underground. A small mound will be created around each well stickup (to make water drain away from the casing for protection of water quality and to provide access for well maintenance); however, this small amount of fill will not result in any floodplain impacts because design will take a net-zero approach to cut/fill--the small amount of fill placed for each well's mound will be negated by an equal small amount of fill being excavated from the area adjacent to the wells.

Based on this information, the Project will not result in any significant adverse to flooding conditions.

#### **5.0 IMPACT ON PLANTS AND ANIMALS**

The NYSDEC Environmental Resource Mapper indicates that the Project Area is in the vicinity of the Bog Turtle (endangered listing) and the New England cottontail (listed as a species of special concern). The New England cottontail prefers thick shrub areas. Although there are some shrub areas in the project site, they are relatively small and mostly forested, so potential habitat is unlikely, and no significant adverse impacts to New England cottontail will occur. Species of special concern are monitored but not regulated species by NYSDEC. Furthermore, the total physical ground disturbance is estimated at less than one acre.

The U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) website identifies the Project Area as being within the range of a federally endangered species (the Indiana Bat) and a threatened species (the Bog Turtle). The project will involve minimal removal of trees; therefore, trees will be removed between November 1 and March 31, during the winter season when the bats are in hibernacula, in order to avoid potential impacts to the bat species.

LaBella prepared a Phase I Bog Turtle Habitat Survey Report for the Village in January 2022. Based on the investigation conducted as part of the Phase I Bog Turtle Habitat Survey, the areas surrounding the wells do not provide potential Bog Turtle hibernation or basking habitat. This conclusion is based upon the lack of springs or seeps, vegetative cover, and mucky soils required by this species and flooding conditions that would support migration (possible travel corridors), but not potential habitat. Furthermore, no areas of potential hibernacula were observed during field surveys. Therefore, no significant adverse impacts to Bog Turtles will occur as part of the proposed action.

#### **6.0 IMPACT ON CRITICAL ENVIRONMENTAL AREAS (CEA)**

The Great Swamp Critical Environmental Area (CEA) occupies a portion of the Project Area and is generally coterminous with the boundaries of NYSDEC-mapped Wetland DP-22 within the Project Area. The Great Swamp CEA covers approximately 6,000 acres of eastern Putnam and Dutchess Counties and was designated in 1992 because of its "benefit to human health."

According to LaBella's Pumping Test Overview memorandum on March 24, 2022, the Lower Baxter site is able to reliably support well yields up to 210 gpm, and that during a majority of time there will be no change to water levels in the adjoining DP-22 wetland hydrology. The memorandum states there will be times when stream flow is less than the well withdrawal rates, occurring less than 5% of the time, and during those times, surface water levels may decline slowly in portions of wetland DP-22 adjacent to the wells. No significant environmental impacts are expected since many wetlands lose full saturation from time to time so short-term water level declines are not unusual for wetlands.

Accordingly, no significant adverse Impacts to surface waters or the CEA will occur.

## **7.0 CONSISTENCY WITH COMMUNITY PLANS**

The Village of Pawling Comprehensive Plan (Plan) discusses the Village's water supply issues, and the development of new water wells is an explicit goal of the Plan. The Project Area is identified as undeveloped, vacant area (Parcels B and C) in the Plan, which are noted to have several environmental constraints affecting their development. The Plan shows potential development schemes, which were never realized. The Village took ownership of the 50 Tyrell Road parcel over a decade ago and subsequently purchased adjacent parcels are used for water supply purposes. The proposed project aligns with the goals of the Comprehensive Plan and will not result in significant adverse impacts to public policy.

## **CONCLUSION**

With reference to the criteria for significance found in 617.7 (c)(1)(i) – (xii) and as demonstrated above:

1. The project will not result in a substantial change in existing air quality, other than short term; temporary construction impacts; ground or surface water quality or quantity; traffic and noise, other than short term; temporary construction impacts; a substantial increase in solid waste production or a substantial increase in potential for erosion, flooding, leaching or drainage problems.
2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant or the habitat of such a species or other significant adverse impacts to natural resources.
3. The project will not result in the impairment of the environmental characteristics of a critical environmental area.
4. The project will not result in the creation of a material conflict with a community's current plans or goals as officially adopted.
5. The project will not result in the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources or of existing community or neighborhood character.
6. The project will not result in a major change in the use of either the quantity or type of energy.
7. The project will not result in the creation of a hazard to human health.

8. The project will not result in a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.
9. The project will not result in the encouragement or attraction of large numbers of people to a place or places for more than a few days, compared to the number of people who would come to such a place absent the action.
10. The project will not result in the creation of a material demand for other actions that would result in one of the above consequences.
11. The project will not result in changes in two or more areas of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.
12. The project is not a part of two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in Part 617.7 9(c)(1).

**Village of Pawling**  
**New York State Environmental Quality Review Act (SEQRA)**  
**Authorizing Review of Impacts and a Determination of Non-Significance**  
**Village of Pawling Water Supply Project - Lower Baxter**

**WHEREAS**, the Village of Pawling is proposing to develop five water supply wells, a water treatment facility, and related utility line infrastructure on the Village's Water Supply lands. Five new water wells will be put into operation and a treatment facility with an EMC generator will be constructed at 50 Tyrell Road on Tax Parcel No. 6957-20-904187-0000. The remaining utility line infrastructure will be constructed at 50 Tyrell Road to make a connection through two parcels (134001-6957-16-937250-0000 and 134001-6957-16-868317-0000) and the New York State Electric and Gas Corporation (NYSEG) transmission corridor (by easement) to Grandview Avenue.

**WHEREAS**, the 50 Tyrell Road parcel is currently occupied by three existing and operational bedrock wells (known as the Baxter wells), existing test wells (whose permanent operation is part of this environmental analysis), existing Baxter Green Water Treatment Plant and associated structures, successional forest and wetland area. This parcel abuts the Baxter Road residential subdivision to the west, NYS Electric and Gas (NYSEG) right-of-way (ROW) to the northwest, Village water supply land (134001-6957-16-937250-0000) to the northeast (through which the water line will connect), residential development to the east and south, with some undeveloped area.

**WHEREAS**, the proposed wells will be added to the Village's water supply system for which additional ground water supply is urgently needed pursuant to the terms of the Consent Order between the Dutchess County Department of Health and the Village. These wells will increase source capacity to enable the water supply system to sufficiently meet maximum daily demand. The new wells are proposed to operate in conjunction with the Umscheid water wells (located northwest of the site on parcel 134001-6957-16-868317-0000). With the Lower Baxter wells operational in conjunction with the Umscheid water wells, the maximum daily flow from the water treatment plant will be 432,000 gallons per day.

**WHEREAS**, the Village is seeking approval from the NYS Department of Health (NYSDOH) and Dutchess County (DCDOH), financing and bonding approval from the Village of Pawling Board of Trustees, and a water withdrawal permit and wetland permit (permanent operation of the test wells and installation of a water line) from the NYS Department of Environmental Conservation (NYSDEC). No change in access is proposed.

**WHEREAS**, the proposed project and system improvements are classified as an Unlisted Action under the NYS Environmental Quality Review Act (hereinafter "SEQRA") and a Full Environmental Assessment Form (EAF) has been completed.

**NOW, THEREFORE, BE IT RESOLVED** that, through a review of the Environmental Assessment Form and consideration of the criteria in 6 NYCRR § 617.7(c), the Village Board of Trustees concludes the action will not have a significant adverse impact on the environment and a corresponding Negative Declaration will be made, and

IT IS FURTHER RESOLVED, that the Negative Declaration will be filed with all appropriate parties in accordance with 6 NYCRR § 617.12.

	Yea	Nay
Lauri Taylor, Mayor	X	
Dan Peters, Trustee	X	
John Burweger, Trustee	X	
Jerry Locascio, Trustee	X	
Tom Meyer, Trustee	X	

Date: April 4, 2022  
Village of Pawling Village Board of Trustees  
9 Memorial Ave,  
Pawling, New York 12564

Telephone: 845-855-1122  
Contact: Jennifer Osborn, Village Clerk  
Date: April 4, 2022

**THE VILLAGE OF PAWLING**

**MTA TRUNK SEWER REPLACEMENT PROJECT  
WIIA AUTHORIZING RESOLUTION**

**WHEREAS**, the Pawling Joint Sewer Commission (PJSC) proposes to replace an existing trunk sewer to eliminate ongoing maintenance issues caused by periodic blockage of the asbestos cement (AC) trunk sewer, which is seasonally affected by infiltration and exfiltration as well, and

**WHEREAS**, the 2,850-foot-long replacement trunk sewer will be constructed on MTA property (tax parcel 134001-7057-17-082121) in the area east of the MTA railroad and beneath the existing cemetery (tax parcel 134001-7057-17-160205 and will travel north, and then cut east across the athletic fields of the Trinity Pawling School (tax parcel 134001-7057-13-194303) to terminate in the existing WWTP Main Lift Station located at the PJSC Wastewater Treatment Plant located off Corbin Road (west of NYS Route 22) on tax parcel 134001-7057-13-224427, requiring easements, and

**WHEREAS**, the new trunk sewer will be constructed using directional drill techniques at depths of 6 feet minimum below ground to ensure no impact to wetlands or streams and 7 feet minimum below the cemetery. Remaining areas will be constructed using open cut techniques along the Trinity Pawling athletic fields, and

**WHEREAS**, a potential new connection to PJSC manhole #10, is under consideration as part of this project. Alternatively, the existing sewer main may be used for connection. The decision will be made during final design, and

**WHEREAS**, the replacement trunk sewer will improve the system to allow continued capacity for the existing flow as originally designed. No additional capacity is planned for as part of this project.

**WHEREAS**, the project requires the following approvals:

1. Village of Pawling Decision to Fund
2. Pawling Joint Sewer Commission Decision to Fund
3. NYSDEC Article 24 permit (pending); Article 11 permit (pending); WQC (pending)
4. NYSDEC Plans and Specifications for Sanitary Sewer
5. DCDBCH Plans and Specifications for Sanitary Sewer
6. NYS Environmental Facilities Corporation (NYSEFC) Water Infrastructure Improvement Act (WIIA) Loan and Grant.
7. United States Army Corps of Engineers Section 10 Rivers and 404 Clean Water (pending)

**WHEREAS**, NYS Environmental Facilities Corporation is offering grants for clean and drinking water projects during the 2023-2024 state fiscal year to selected municipalities with infrastructure projects that protect public health and/or improve water quality; and

**WHEREAS**, the Village of Pawling is seeking funding through the NYS Water Infrastructure Improvement (WIIA) Grant;

**WHEREAS**, NYS Environmental Facilities Corporation requires a resolution authorizing the undertaking of the project and the total funding appropriated for the project. The resolution must also designate a representative of the applicant who is authorized to sign the funding agreement with EFC and any associated documents.

**NOW THEREFORE, IT IS RESOLVED**, that the Village of Pawling authorizes the undertaking of MTA trunk sewer replacement project and the estimated project cost is \$2,069,796 with SRF Issuance Costs; and it is

**FURTHER RESOLVED**, that the Village of Pawling proposes to meet the financial obligations necessary to fully and satisfactorily complete the project through Environmental Facilities Short Term and Long Term Financing; and it is

**FURTHER RESOLVED**, that the Village of Pawling authorizes and empowers Village Mayor, to sign and submit a grant application and sign the funding agreement with Environmental Facilities Corporation and any associated documents; and it is

**FURTHER RESOLVED**, that this Resolution shall take effect immediately.

The question of the foregoing Resolution was duly put to a vote, the Board of Trustees voting as follows:

	Yea	Nay
Lauri Taylor, Mayor	_____	_____
John Burweger, Trustee	_____	_____
Jerry Locascio, Trustee	_____	_____
Arthur Guzzo, Trustee	_____	_____
Stephen Pezzella, Trustee	_____	_____

I hereby certify that the above is a true and correct copy of the Resolution passed by the Village of Pawling Board of Trustees at a meeting held on \_\_\_\_\_, 2023.

Date:

\_\_\_\_\_  
Jennifer Osborn, Village Clerk



## SIGNATURE FOR GRANT APPLICATION

CERTIFICATION: On behalf of the Applicant, and in accordance with the board resolution by

**Village of Pawling**

(Governing Body of Municipal Applicant)

authorizing me to do so, I apply for a WIIA grant and/or IMG grant for the project described in this application. By signing this application, I certify and agree on behalf of the Applicant and its governing body that all of the information contained in this application, in other statements and exhibits attached hereto or referenced herein, and in all statements, data and supporting documents which have been made or furnished for the purpose of receiving a WIIA grant or IMG grant for the project(s) described herein, are true, correct and complete to the best of my knowledge and belief.

I further agree on behalf of the Applicant that:

- If CWSRF assistance is provided for the project described in this application, the Applicant shall comply with all applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et. seq. Chapter 565 of the Laws of New York of 1989, 6 NYCRR Part 649 and 21 NYCRR Part 2602, as amended, regarding CWSRF assistance.
- If DWSRF assistance is provided for the project described in this application, the Applicant shall comply with all applicable provisions of the federal Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq., and applicable provisions of state law, codified under Chapter 413 of the Laws of New York of 1996, 10 NYCRR Part 53, and 21 NYCRR Part 2604, as amended, regarding DWSRF assistance.

I further agree that the Applicant will comply with the provisions of the Minority and Women's Business Enterprise – Equal Employment Opportunity requirements of Article 15-A of the New York State Executive Law, and will maintain such records and take such actions necessary to demonstrate such compliance throughout the construction of the project.

Further, I acknowledge that offering a written instrument knowing that the written instrument contains a false statement or false information, with the intent to defraud the State or any political subdivision, public authority or public benefit corporation of the State, with the knowledge or belief that it will be filed with or recorded by the State or any political subdivision, public authority or public benefit corporation of the State, constitutes a crime under New York State Law.

(Signature of Authorized Representative)

(Date)

**Lauri Taylor, Mayor**

(Name and Title)

**Village of Pawling**

(Municipal Applicant)

**MEMORANDUM OF UNDERSTANDING  
(CORBIN ROAD)**

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum"), dated \_\_\_\_\_, 2023, is by and between METRO-NORTH COMMUTER RAILROAD COMPANY ("Metro-North"), a public benefit corporation organized under the laws of the State of New York with its principal office at 420 Lexington Avenue, New York, New York and VILLAGE OF PAWLING ("Village"), a municipal corporation and political subdivision of the State of New York with its principal office at 9 Memorial Avenue, Pawling, NY 12564. Metro-North and the Village may be referred to herein individually as a "Party" or collectively as the "Parties."

**WITNESSETH:**

WHEREAS, Metro-North is an operating agency of the Metropolitan Transportation Authority (the "MTA"); and

WHEREAS, Metro-North currently has numerous grade crossings, where various state and local streets, roads and other passageways cross its tracks at grade; and

WHEREAS, Metro-North operates and maintains a variety of grade crossing protection devices at certain grade crossings intended to reduce the risk of accidents or incidents involving trains coming into contact with vehicles or pedestrians crossing the tracks; and

WHEREAS, because of the priority which Metro-North gives to conducting rail operations in a manner that protects the safety of its employees, passengers, and the general public, and the emergence of new technologies, Metro-North is evaluating whether additional grade crossing protection or other safety measures would be appropriate at certain grade crossings; and

WHEREAS, one of the grade crossings which has been evaluated is the crossing at Corbin Road over Metro-North's Harlem Line, located in the Village of Pawling, New York (the "Crossing"); and

WHEREAS, the Village owns and maintains the portion of Corbin Road which crosses over Metro-North's tracks mentioned above; and

WHEREAS, Metro-North and the Village have concluded that it is appropriate to install certain grade crossing protection devices at the Crossing, as well as other safety measures, in the interest of enhancing public safety; and

WHEREAS, Metro-North and the Village wish to work together to provide for the design, construction and installation of such grade crossing protection and other safety measures; and

WHEREAS, certain Federal Highway Administration ("FHWA") grant funds are being advanced to the State of New York (the "State"), acting by and through the New York State Department of Transportation ("NYSDOT"), which will in turn be disbursed by NYSDOT to the MTA to defray the costs of designing, constructing, and installing such additional grade crossing protection and other safety measures; and

WHEREAS, this Memorandum is intended to set out terms and conditions governing the relationship between Metro-North and the Village with respect to the design, construction, installation, maintenance, and repair of such additional grade crossing protection and other safety measures, and the application of federal grant funds to the costs thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. Terms defined in the preamble and in the recitals shall have their assigned meanings and each of the following terms has the meaning assigned to it.

“Builder” means the firm or firms selected by Metro-North to construct and install the Off ROW Facilities.

“Construction Commencement Date” means the date when Metro-North intends to commence construction of the Off ROW Facilities.

“Construction Commencement Date Notice” means a notice sent by Metro-North that gives notice to the Village of the Construction Commencement Date.

“Construction Contract” means the contract to be entered into for the construction and installation of the Off ROW Facilities between Metro-North and its selected Builder, as such contract may be amended from time to time.

"Construction Work" means construction and installation of the Off ROW Facilities, in accordance with this Memorandum.

"Design Contract" means the contract to be entered into for design of the Off ROW Facilities between Metro-North and its selected Designer, as such contract may be amended from time to time.

"Designer" means the firm or firms selected by Metro-North to design the Off ROW Facilities.

"Design Work" means the design of the Off ROW Facilities, in accordance with this Memorandum.

"Execution Date" means the date this Memorandum is executed by the last of the Parties to execute same.

"Federal Grant Agreement" means the Grant Agreement between the FHWA and NYSDOT with respect to the Project, as the same may be amended from time to time.

"Off ROW Facilities" means those additional grade crossing protection devices, equipment and facilities forming part of the Project (including, without limitation, paving, striping, sidewalks, traffic control signals, concrete medians, or other devices to control and protect vehicular and

pedestrian traffic) which will be constructed and installed by Metro-North or its Builder off of Metro-North's right of way in accordance with this Memorandum.

"Project" means the design, construction, and installation by Metro-North of grade crossing devices, equipment, and facilities at the Crossing. The Project consists of devices, equipment, and facilities to be constructed and installed on Metro-North's right of way and the Off ROW Facilities.

"State Grant Agreement" means the Subgrant Agreement between the State, acting by and through the Commissioner of NYSDOT, and the MTA with respect to the Project, as the same may be amended from time to time.

"Substantially Complete" or similar phrases shall mean that the Work has been completed substantially in accordance with the Approved Design (as hereinafter defined), as the same may be changed or modified in accordance with the terms hereof, but for punch list-type items that do not prevent the Off ROW Facilities from being used for its intended purpose.

"Term" has the meaning assigned to it in Section 2.

"Work" means the Design Work and the Construction Work.

2. Term. This Memorandum shall have a term and be effective commencing as of the Execution Date and expiring thirty (30) days following Substantial Completion, provided, however, the provisions of this Memorandum that specifically state that they survive the expiration or termination of this Memorandum shall so survive. Metro-North shall give the Construction Commencement Date Notice to the Village not less than thirty (30) days before the Construction Commencement Date. In the event that Metro-North does not enter into a Construction Contract within three (3) years of the Execution Date, or the Project is abandoned by Metro-North, then this Memorandum shall be of no force or effect.

3. Performance of Work. Metro-North agrees, as part of the Project, to cause its Designer to design and its Builder to construct and install the Off ROW Facilities in accordance with this Memorandum and the Approved Design (as hereinafter defined) as the same may be modified in accordance with the terms hereof.

4. Design.

(a) Metro-North agrees to engage a Designer with the appropriate technical skill and expertise to design the Off ROW Work. Metro-North shall submit a preliminary (30%) level design to the Village for its review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. Metro-North further agrees to advance the design of the Off ROW Facilities to a final (100%) design and shall submit such final design to the Village for its review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. The final design, as approved by the Village, shall be referred to herein as the "Approved Design." Metro-North may, at its discretion, make changes or modifications to the Approved Design, provided that any material change or modification shall first be submitted to the Village for its review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. All changes or modifications made by Metro-North to the Approved Design in accordance with the terms hereof shall be considered as part of the Approved Design.

(b) The Approved Design shall comply with (i) all applicable federal and state laws, orders, rules, and regulations pertaining to the design of grade crossing protection devices (including, without limitation, 49 CFR 234/236 and the Manual of Uniform Traffic Control Devices and NYSDOT's Highway Design Manual), (ii) industry standards (including, without limitation, standards established by the American Railway Engineering and Maintenance of Way Association), and (iii) Metro-North grade crossing standards.

(c) Metro-North shall deliver a copy of the Approved Design to the Village for its records.

(d) Metro-North shall deliver a copy of all changes and modifications to the Approved Design made in accordance with this Memorandum to the Village for its records.

5. Costs of Work; Construction of Off ROW Facilities; Compliance with Applicable Laws; Completion of Work.

(a) Metro-North shall not be required to pay the Village fees for permits, design review, or inspections, as more fully provided in Sections 7(a) and (b).

(b) Metro-North shall cause the Builder to construct the Off ROW Facilities in accordance with the Approved Design and this Memorandum, and in compliance with all applicable federal and state laws, orders, rules, and regulations.

6. Inspection; Substantial Completion.

(a) During the course of construction of the Off ROW Facilities, the Village will have the right to observe the progress of construction. Entry shall not interfere with construction related activities and shall be subject to safety requirements. Metro-North and Builder shall have the right to have the Village representatives accompanied by a representative of Metro-North and/or Builder whenever the Village representatives are on Metro-North property.

(b) Metro-North shall give written notice to the Village when Metro-North determines that the Construction Work for the Off ROW Facilities is substantially complete in accordance with the Approved Design. Such notice shall invite the Village to attend an inspection of the Construction Work by Metro-North. Such inspection shall take place on a mutually acceptable date but not later than fifteen (15) days from the date of such notice.

7. Cooperation by Village. The Village agrees to facilitate the timely commencement and completion of all Work as may be reasonably requested by Metro-North or the Builder from time to time during the Term, including, without limitation, by extending the following cooperation to Metro-North and its Builder:

(a) The Village shall expedite its review of the preliminary design and final design of the OffROW Facilities, and of any material changes or modifications to the Approved Design, pursuant to Section 4(a) hereof, and provide its approval or any comments to Metro-North and its Designer

within thirty (30) days of submission of such preliminary design, final design, or material changes or modifications, as the case may be, to the Village.

(b) Metro-North will cause the Builder to apply for any applicable legally required Village permits necessary to safely execute the Work. The Village agrees not to unreasonably withhold, condition, or delay the issuance of such permits, and not to charge any fees to Metro-North, its Designer, or its Builder, for such permits, for its review of the preliminary design and final design of the Off ROW Facilities and revisions thereto, for any material changes or modifications to the Approved Design, or for any Village inspections of the Work.

(c) The Village agrees to cooperate with Metro-North to ensure the safety of pedestrians and motorists to the extent practicable while Construction Work is taking place, or while construction equipment, supplies, or materials are being delivered for the Construction Work to Metro-North, Village, or third party property in the vicinity of the Crossing, including arranging for any necessary police or traffic protection measures at no charge to Metro-North. The Village acknowledges that such cooperation may require, at times, complete or partial closures of Corbin Road or other Village or other streets or roads adjacent to the Crossing, and the Village agrees to approve any such closures when requested by Metro-North as quickly as possible. Metro-North agrees, to the extent it is reasonably possible and practical for it to do so, to seek the Village's input regarding acceptable dates and times prior to requesting police or traffic protection and street or road closures.

(d) The Village hereby grants to Metro-North and its Builder a license during the Term of this Agreement, for ingress, egress, access to, and right to use Village roads and other Village property, in ways that Metro-North reasonably determines is necessary or desirable to complete the Work and fulfill the obligations of Metro-North and Builder under this Agreement.

(e) The Village shall cooperate with Metro-North to secure all necessary license agreements from adjacent property owners to gain access to adjacent property for construction related purposes, including, without limitation, for staging equipment, materials, or supplies. Metro-North agrees, to the extent it is reasonably possible and practical for it to do so, to cooperate with and assist the Village in obtaining such license agreements.

(f) The Village shall be responsible for all necessary communications with adjacent property owners and businesses regarding the Project.

#### 8. Federal and State Grant Agreement.

(a) In connection with the design, construction, installation, operation and maintenance of the OffROW Facilities, the Village shall not take any action, or fail to take to take any action when required, so as to cause Metro-North to be in non-compliance with any of the terms and conditions of the Federal Grant Agreement or the State Grant Agreement.

(b) The provisions of this Section 8 shall survive the expiration or earlier termination of this Memorandum.

9. Operation, Maintenance, Inspection, and Repair.

(a) Upon Substantial Completion of the Work by Metro-North, the Village shall: (i) own and operate the Off ROW Facilities, at its sole expense, in accordance with all applicable federal and state laws, orders, rules and regulations, and the terms of the Federal Grant Agreement and State Grant Agreement; and (ii) maintain, inspect, and repair the Off ROW Facilities, at its sole expense, in good operating condition and in accordance with all applicable federal and state laws, orders, rules, and regulations, and the terms of the Federal Grant Agreement and State Grant Agreement.

(b) Except as provided in the next sentence, all devices, equipment, and facilities forming part of the Project and located or installed on Metro-North's right of way shall be owned, operated, inspected, repaired, and maintained by Metro-North, and the Village agrees that it may not enter upon such right of way and open, inspect, alter, modify, operate, maintain, or remove any such devices, equipment, or facilities without the prior written consent of Metro-North. The Village agrees to maintain the roadway striping that crosses the right of way. If the Village needs to enter upon the right of way to maintain any Off ROW Facilities, the Village will obtain the prior written consent of Metro-North, which may include procurement of an Entry Permit from Metro-North.

The provisions of this Section 9 shall survive the expiration or earlier termination of this Memorandum.

10. Indemnification and Insurance.

(a) Metro-North's Construction Contract and Design Contract shall require that its Contractor(s) indemnify and hold harmless that Village from and against any and all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, and expenses of every character whatsoever for injury to or death of any person or persons whomsoever and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the performance of the Work by its Contractor(s).

(b) Metro-North's Construction Contract and Design Contract shall require that its Contractor(s) provide the amounts of insurance required under the State Grant Agreement and shall further require that such Contractor(s) include the Village as an additional insured.

11. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Memorandum to be made, given, or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows (and shall be deemed given upon receipt or refusal to accept receipt):

If to the Village:  
Lauri Taylor, Mayor  
Village of Pawling  
9 Memorial Avenue  
Pawling, NY 12564

If to Metro-North:  
Metro-North Commuter Railroad Company  
420 Lexington Avenue, 11<sup>th</sup> floor  
New York, NY 10170  
Attn: General Counsel

12. Miscellaneous Provisions.

(a) **No Third-Party Beneficiary.** Nothing in this Memorandum shall be deemed to create any right in any person not a party hereto, other than the Designer and the Builder, as provided herein, and permitted successors and assigns of a Party hereto. This Memorandum shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(b) **Severability.** If any provision of this Memorandum shall be determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect any other provision hereof.

(c) **Headings.** The headings contained in this Memorandum are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Memorandum.

(d) **Joint Preparation.** This Memorandum shall be deemed to have been jointly prepared by the Parties. This Memorandum has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(e) **Governing Law.** This Memorandum shall be governed by and construed under the laws of the State of New York.

(f) **No Recourse.** No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee, or agent of any other party alleging personal liability on the part of such person with respect to performance of Metro-North's or the Village's obligations under this Memorandum.

(g) **Counterparts.** This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument.

(h) **Further Assurances.** Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, and documents as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Memorandum and the consummation of the transactions contemplated hereby. The provisions of this Section 11(h) shall survive the expiration or earlier termination of this Memorandum.



IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

METRO-NORTH COMMUTER RAILROAD COMPANY

By: \_\_\_\_\_  
Catherine A. Rinaldi, President

VILLAGE OF PAWLING

By: \_\_\_\_\_  
Lauri Taylor, Mayor

**MEMORANDUM OF UNDERSTANDING  
(MAIN STREET, SOUTH STREET, PAWLING PEDESTRIAN CROSSINGS)**

THIS MEMORANDUM OF UNDERSTANDING ("Memorandum"), dated \_\_\_\_\_, 2023, is by and between METRO-NORTH COMMUTER RAILROAD COMPANY ("Metro-North"), a public benefit corporation organized under the laws of the State of New York with its principal office at 420 Lexington Avenue, New York, New York and VILLAGE OF PAWLING ("Village"), a municipal corporation and political subdivision of the State of New York with its principal office at 9 Memorial Avenue, Pawling, NY 12564. Metro-North and the Village may be referred to herein individually as a "Party" or collectively as the "Parties."

**WITNESSETH:**

WHEREAS, Metro-North is an operating agency of the Metropolitan Transportation Authority (the "MTA"); and

WHEREAS, Metro-North currently has numerous grade crossings, where various state and local streets, roads and other passageways cross its tracks at grade; and

WHEREAS, Metro-North operates and maintains a variety of grade crossing protection devices at certain grade crossings intended to reduce the risk of accidents or incidents involving trains coming into contact with vehicles or pedestrians crossing the tracks; and

WHEREAS, because of the priority which Metro-North gives to conducting rail operations in a manner that protects the safety of its employees, passengers, and the general public, and the emergence of new technologies, Metro-North is evaluating whether additional grade crossing protection or other safety measures would be appropriate at certain grade crossings; and

WHEREAS, some of the grade crossings which have been evaluated are the Main Street, South Street, and Pawling Pedestrian crossings over Metro-North's Harlem Line, located in the Village of Pawling, New York (the "Crossings"); and

WHEREAS, the Village owns and maintains the portions of Main Street and South Street which crosses over Metro-North's tracks mentioned above; and

WHEREAS, Metro-North and the Village have concluded that it is appropriate to install certain grade crossing protection devices at the Crossings, as well as other safety measures, in the interest of enhancing public safety; and

WHEREAS, Metro-North and the Village wish to work together to provide for the design, construction and installation of such grade crossing protection and other safety measures; and

WHEREAS, certain Federal Highway Administration ("FHWA") grant funds are being advanced to the State of New York (the "State"), acting by and through the New York State Department of Transportation ("NYSDOT"), which will in turn be disbursed by NYSDOT to the MTA to defray the

costs of designing, constructing, and installing such additional grade crossing protection and other safety measures; and

WHEREAS, this Memorandum is intended to set out terms and conditions governing the relationship between Metro-North and the Village with respect to the design, construction, installation, maintenance, and repair of such additional grade crossing protection and other safety measures, and the application of federal grant funds to the costs thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Definitions. Terms defined in the preamble and in the recitals shall have their assigned meanings and each of the following terms has the meaning assigned to it.

"Builder" means the firm or firms selected by Metro-North to construct and install the Off ROW Facilities.

"Construction Commencement Date" means the date when Metro-North intends to commence construction of the Off ROW Facilities.

"Construction Commencement Date Notice" means a notice sent by Metro-North that gives notice to the Village of the Construction Commencement Date.

"Construction Contract" means the contract to be entered into for the construction and installation of the Off ROW Facilities between Metro-North and its selected Builder, as such contract may be amended from time to time.

"Construction Work" means construction and installation of the Off ROW Facilities, in accordance with this Memorandum.

"Design Contract" means the contract to be entered into for design of the Off ROW Facilities between Metro-North and its selected Designer, as such contract may be amended from time to time.

"Designer" means the firm or firms selected by Metro-North to design the Off ROW Facilities.

"Design Work" means the design of the Off ROW Facilities, in accordance with this Memorandum.

"Execution Date" means the date this Memorandum is executed by the last of the Parties to execute same.

"Federal Grant Agreement" means the Grant Agreement between the FHWA and NYSDOT with respect to the Project, as the same may be amended from time to time.

"Off ROW Facilities" means those additional grade crossing protection devices, equipment and facilities forming part of the Project (including, without limitation, paving, striping, sidewalks,

traffic control signals, concrete medians, or other devices to control and protect vehicular and pedestrian traffic) which will be constructed and installed by Metro-North or its Builder off of Metro-North's right of way in accordance with this Memorandum.

"Project" means the design, construction, and installation by Metro-North of grade crossing devices, equipment, and facilities at the Crossings. The Project consists of devices, equipment, and facilities to be constructed and installed on Metro-North's right of way and the Off ROW Facilities.

"State Grant Agreement" means the Subgrant Agreement between the State, acting by and through the Commissioner of NYSDOT, and the MTA with respect to the Project, as the same may be amended from time to time.

"Substantially Complete" or similar phrases shall mean that the Work has been completed substantially in accordance with the Approved Design (as hereinafter defined), as the same may be changed or modified in accordance with the terms hereof, but for punch list-type items that do not prevent the Off ROW Facilities from being used for its intended purpose.

"Term" has the meaning assigned to it in Section 2.

"Work" means the Design Work and the Construction Work.

2. Term. This Memorandum shall have a term and be effective commencing as of the Execution Date and expiring thirty (30) days following Substantial Completion, provided, however, the provisions of this Memorandum that specifically state that they survive the expiration or termination of this Memorandum shall so survive. Metro-North shall give the Construction Commencement Date Notice to the Village not less than thirty (30) days before the Construction Commencement Date. In the event that Metro-North does not enter into a Construction Contract within three (3) years of the Execution Date, or the Project is abandoned by Metro-North, then this Memorandum shall be of no force or effect.

3. Performance of Work. Metro-North agrees, as part of the Project, to cause its Designer to design and its Builder to construct and install the Off ROW Facilities in accordance with this Memorandum and the Approved Design (as hereinafter defined) as the same may be modified in accordance with the terms hereof.

4. Design.

(a) Metro-North agrees to engage a Designer with the appropriate technical skill and expertise to design the Off ROW Work. Metro-North shall submit a preliminary (30%) level design to the Village for its review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. Metro-North further agrees to advance the design of the Off ROW Facilities to a final (100%) design and shall submit such final design to the Village for its review and approval, such approval not to be unreasonably withheld, conditioned, or delayed. The final design, as approved by the Village, shall be referred to herein as the "Approved Design." Metro-North may, at its discretion, make changes or modifications to the Approved Design, provided that any material change or modification shall first be submitted to the Village for its review and approval, such approval not to be unreasonably withheld,

conditioned, or delayed. All changes or modifications made by Metro-North to the Approved Design in accordance with the terms hereof shall be considered as part of the Approved Design.

(b) The Approved Design shall comply with (i) all applicable federal and state laws, orders, rules, and regulations pertaining to the design of grade crossing protection devices (including, without limitation, 49 CFR 234/236 and the Manual of Uniform Traffic Control Devices and NYSDOT's Highway Design Manual), (ii) industry standards (including, without limitation, standards established by the American Railway Engineering and Maintenance of Way Association), and (iii) Metro-North grade crossing standards.

(c) Metro-North shall deliver a copy of the Approved Design to the Village for its records.

(d) Metro-North shall deliver a copy of all changes and modifications to the Approved Design made in accordance with this Memorandum to the Village for its records.

5. Costs of Work; Construction of Off ROW Facilities; Compliance with Applicable Laws; Completion of Work.

(a) Metro-North shall not be required to pay the Village fees for permits, design review, or inspections, as more fully provided in Sections 7(a) and (b).

(b) Metro-North shall cause the Builder to construct the Off ROW Facilities in accordance with the Approved Design and this Memorandum, and in compliance with all applicable federal and state laws, orders, rules, and regulations.

6. Inspection; Substantial Completion.

(a) During the course of construction of the Off ROW Facilities, the Village will have the right to observe the progress of construction. Entry shall not interfere with construction related activities and shall be subject to safety requirements. Metro-North and Builder shall have the right to have the Village representatives accompanied by a representative of Metro-North and/or Builder whenever the Village representatives are on Metro-North property.

(b) Metro-North shall give written notice to the Village when Metro-North determines that the Construction Work for the Off ROW Facilities is substantially complete in accordance with the Approved Design. Such notice shall invite the Village to attend an inspection of the Construction Work by Metro-North. Such inspection shall take place on a mutually acceptable date but not later than fifteen (15) days from the date of such notice.

7. Cooperation by Village. The Village agrees to facilitate the timely commencement and completion of all Work as may be reasonably requested by Metro-North or the Builder from time to time during the Term, including, without limitation, by extending the following cooperation to Metro-North and its Builder:

(a) The Village shall expedite its review of the preliminary design and final design of the Off ROW Facilities, and of any material changes or modifications to the Approved Design, pursuant

to Section 4(a) hereof, and provide its approval or any comments to Metro-North and its Designer within thirty (30) days of submission of such preliminary design, final design, or material changes or modifications, as the case may be, to the Village.

(b) Metro-North will cause the Builder to apply for any applicable legally required Village permits necessary to safely execute the Work. The Village agrees not to unreasonably withhold, condition, or delay the issuance of such permits, and not to charge any fees to Metro-North, its Designer, or its Builder, for such permits, for its review of the preliminary design and final design of the Off ROW Facilities and revisions thereto, for any material changes or modifications to the Approved Design, or for any Village inspections of the Work.

(c) The Village agrees to cooperate with Metro-North to ensure the safety of pedestrians and motorists to the extent practicable while Construction Work is taking place, or while construction equipment, supplies, or materials are being delivered for the Construction Work to Metro-North, Village, or third party property in the vicinity of the Crossings, including arranging for any necessary police or traffic protection measures at no charge to Metro-North. The Village acknowledges that such cooperation may require, at times, complete or partial closures of Main Street, South Street, or other Village or other streets or roads adjacent to the Crossings, and the Village agrees to approve any such closures when requested by Metro-North as quickly as possible. Metro-North agrees, to the extent it is reasonably possible and practical for it to do so, to seek the Village's input regarding acceptable dates and times prior to requesting police or traffic protection and street or road closures.

(d) The Village hereby grants to Metro-North and its Builder a license during the Term of this Agreement, for ingress, egress, access to, and right to use Village roads and other Village property, in ways that Metro-North reasonably determines is necessary or desirable to complete the Work and fulfill the obligations of Metro-North and Builder under this Agreement.

(e) The Village shall cooperate with Metro-North to secure all necessary license agreements from adjacent property owners to gain access to adjacent property for construction related purposes, including, without limitation, for staging equipment, materials, or supplies. Metro-North agrees, to the extent it is reasonably possible and practical for it to do so, to cooperate with and assist the Village in obtaining such license agreements.

(f) The Village shall be responsible for all necessary communications with adjacent property owners and businesses regarding the Project.

#### 8. Federal and State Grant Agreement.

(a) In connection with the design, construction, installation, operation and maintenance of the Off ROW Facilities, the Village shall not take any action, or fail to take to take any action when required, so as to cause Metro-North to be in non-compliance with any of the terms and conditions of the Federal Grant Agreement or the State Grant Agreement.

(b) The provisions of this Section 8 shall survive the expiration or earlier termination of this Memorandum.

9. Operation, Maintenance, Inspection, and Repair.

(a) Upon Substantial Completion of the Work by Metro-North, the Village shall: (i) own and operate the Off ROW Facilities, at its sole expense, in accordance with all applicable federal and state laws, orders, rules and regulations, and the terms of the Federal Grant Agreement and State Grant Agreement; and (ii) maintain, inspect, and repair the Off ROW Facilities, at its sole expense, in good operating condition and in accordance with all applicable federal and state laws, orders, rules, and regulations, and the terms of the Federal Grant Agreement and State Grant Agreement.

(b) Except as provided in the next sentence, all devices, equipment, and facilities forming part of the Project and located or installed on Metro-North's right of way shall be owned, operated, inspected, repaired, and maintained by Metro-North, and the Village agrees that it may not enter upon such right of way and open, inspect, alter, modify, operate, maintain, or remove any such devices, equipment, or facilities without the prior written consent of Metro-North. The Village agrees to maintain the roadway striping that crosses the right of way. If the Village needs to enter upon the right of way to maintain any Off ROW Facilities, the Village will obtain the prior written consent of Metro-North, which may include procurement of an Entry Permit from Metro-North.

The provisions of this Section 9 shall survive the expiration or earlier termination of this Memorandum.

10. Indemnification and Insurance.

(a) Metro-North's Construction Contract and Design Contract shall require that its Contractor(s) indemnify and hold harmless that Village from and against any and all claims, liabilities, demands, actions at law and equity, judgments, settlements, losses, damages, and expenses of every character whatsoever for injury to or death of any person or persons whomsoever and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the performance of the Work by its Contractor(s).

(b) Metro-North's Construction Contract and Design Contract shall require that its Contractor(s) provide the amounts of insurance required under the State Grant Agreement and shall further require that such Contractor(s) include the Village as an additional insured.

11. Notices. Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Memorandum to be made, given, or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows (and shall be deemed given upon receipt or refusal to accept receipt):

If to the Village:  
Lauri Taylor, Mayor  
Village of Pawling

9 Memorial Avenue  
Pawling, NY 12564

If to Metro-North:  
Metro-North Commuter Railroad Company  
420 Lexington Avenue, 11<sup>th</sup> floor  
New York, NY 10170  
Attn: General Counsel

12. Miscellaneous Provisions.

(a) **No Third-Party Beneficiary.** Nothing in this Memorandum shall be deemed to create any right in any person not a party hereto, other than the Designer and the Builder, as provided herein, and permitted successors and assigns of a Party hereto. This Memorandum shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(b) **Severability.** If any provision of this Memorandum shall be determined to be invalid, illegal, or unenforceable in any respect, such determination shall not affect any other provision hereof.

(c) **Headings.** The headings contained in this Memorandum are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Memorandum.

(d) **Joint Preparation.** This Memorandum shall be deemed to have been jointly prepared by the Parties. This Memorandum has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(e) **Governing Law.** This Memorandum shall be governed by and construed under the laws of the State of New York.

(f) **No Recourse.** No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee, or agent of any other party alleging personal liability on the part of such person with respect to performance of Metro-North's or the Village's obligations under this Memorandum.

(g) **Counterparts.** This Memorandum may be executed in any number of counterparts and by each Party on a separate counterpart, each of which when so executed and delivered will be deemed an original and all of which shall together constitute one and the same instrument.

(h) **Further Assurances.** Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, and documents as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Memorandum and the consummation of the transactions contemplated hereby. The provisions of this Section 11(h) shall survive the expiration or earlier termination of this Memorandum.



IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their proper officials, pursuant to due and legal action authorizing the same, as of the day and year first written above.

METRO-NORTH COMMUTER RAILROAD COMPANY

By: \_\_\_\_\_  
Catherine A. Rinaldi, President

VILLAGE OF PAWLING

By: \_\_\_\_\_  
Lauri Taylor, Mayor

**RENEWAL**  
**CABLE TELEVISION FRANCHISE**  
**FOR**  
**THE VILLAGE OF PAWLING, NEW YORK**

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## VILLAGE OF PAWLING RENEWAL FRANCHISE

### INTRODUCTION

WHEREAS, Comcast of New York, LLC, (hereinafter "Franchisee"), is the duly authorized holder of a renewal Franchise to operate a cable television system in the Village of Pawling, New York (hereinafter the "Village"), said Franchise having commenced on July 7, 2009;

WHEREAS, the Village is a Franchising Authority in accordance with Title VI of the Federal Cable Act (see 47 U.S.C. § 522 (10)), and is authorized to grant one or more non-exclusive cable franchises pursuant to Article 11 of the New York Public Service Law, as amended, and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended;

WHEREAS, Franchisee filed a written request for a renewal of its Franchise by letter dated December 9, 2020, in conformity with the Cable Communications Policy Act of 1984 ("Cable Act");

WHEREAS, there has been an opportunity for public comment, as required by Section 626(h) of the Cable Act and Section 891.2(a) of the rules of the New York State Public Service Commission (at 16 NYCRR Part 891);

WHEREAS, the Franchising Authority has considered Franchisee's legal and financial conditions and character; technical ability; ability to maintain and operate the cable television system; and approved the foregoing in a full public proceeding affording due process prior to determining that Franchisee is reasonably able to meet the future cable-related needs of the community;

WHEREAS, the Village desires to enter into this Renewal Franchise with Franchisee for the continued operation of a cable system on the terms and conditions set forth herein;

WHEREAS, the terms of this Franchise were considered and found adequate and feasible in a full public hearing affording due process;

WHEREAS, the Franchise complies with the Commission's franchise standards;

WHEREAS, this Franchise is non-exclusive;

WHEREAS, the terms of this Franchise are subject to the approval of the Commission; and

WHEREAS, the Board of Trustees of the Village of Pawling, as the Franchising Authority, finds that Franchisee has complied with the terms of the previous Franchise.

NOW THEREFORE, after due and full consideration, the Franchising Authority and Franchisee agree that this Renewal Franchise is issued upon the following terms and conditions:

**ARTICLE 1**  
**DEFINITIONS**

**SECTION 1.1 - DEFINITIONS**

For the purpose of this Renewal Franchise, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), and Article 11 of Chapter 48 of the New York Consolidated Laws, as amended from time to time, unless otherwise defined herein.

(a) Access Provider – shall mean the person, group or entity, for non-profit, designated by the Franchising Authority for the purpose of operating and managing the use of Public, Educational and Governmental Access funding, equipment and channels on the cable television system in accordance with this Renewal Franchise and 47 U.S.C. 531.

(b) Basic Cable Service – shall mean the lowest tier of service which includes the retransmission of local television broadcast signals.

(c) Cable Act – shall mean the Cable Communications Policy Act of 1984, Public Law No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. 521 et. seq., amending the Communications Act of 1934, as further amended by the 1992 Cable Consumer Protection and Competition Act, Public Law No. 102-385 and the Telecommunications Act of 1996, Public Law No. 104-458, 110 Stat. 56 (1996) and as may be further amended.

(d) Cable Service – shall mean the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(e) Cable System or System – shall mean the facility owned, constructed, installed, operated and maintained by Franchisee in the Village of Pawling, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but

such term does not include (a) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (b) a facility that serves subscribers without using any public right-of-way; (c) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system (other than for purposes of section 621(c) of the Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers unless the extent of such use is solely to provide interactive on-demand services; or (d) an open video system that complies with section 653 of this title, or (e) any facilities of any electric utility used solely for operating its electric utility systems.

(f) Commission – shall mean the New York Public Service Commission or any successor agency thereto.

(g) Drop – shall mean the coaxial cable that connects a home or building to the Subscriber Network.

(h) Educational/Government Access Channel – shall mean the video channel(s) made available by the Franchisee and designated for non-commercial use by 1) the Franchising Authority for the purpose of showing public local government programming; and 2) by educational institutions chartered or franchised by the New York State Department of Education or Board of Regents, such as public or private schools (grades K-12), but not “home schools,” community, public or private colleges or universities;

(i) Effective Date – This Renewal shall become effective on the date that the Commission issues a Certificate of Confirmation for said Renewal Franchise.

(j) FCC – shall mean the Federal Communications Commission or any successor governmental entity.

(k) Franchising Authority – shall mean the Board of Trustees of the Village of Pawling, New York, or the lawful designee thereof.

(l) Franchisee – shall mean Comcast of New York, LLC, or any successor or transferee in accordance with the terms and conditions in this Renewal Franchise.



(m) Franchise Fee – shall mean the payments to be made by Franchisee to the Franchising Authority, the Village of Pawling and or any other governmental subdivision, such as an Access Provider, which shall have the meaning as set forth in Section 622(g) of the Cable Act.

(n) Gross Annual Revenues – means the Cable Service revenue actually received by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Services, calculated in accordance with generally accepted accounting principles (“GAAP”). Cable Service revenue includes monthly basic, premium and pay-per-view video fees, installation fees and equipment rental fees. Gross Revenue shall not include advertising and home shopping revenue, refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

(o) Multichannel Video Programming Distributor – shall mean a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(p) Normal Operating Conditions – shall mean those service conditions which are within the control of the Franchisee. Those conditions which are not within the control of the Franchisee include, but are not limited to, natural disasters, public health emergencies, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(q) Outlet – shall mean an interior receptacle that connects a television set to the Cable Television System.

(r) PEG Access User – shall mean a Person utilizing the Cable Television System, including all related facilities for purposes of production and/or transmission of PEG Access Programming as opposed to utilization solely as a Subscriber.

(s) Person – shall mean any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the Franchising Authority.

(t) Public Access Channel – shall mean a video channel made available by the Franchisee for non-commercial use by the public on a first-come, first-served, non-discriminatory basis.

(u) Public, Educational and Government (PEG) Access Programming – shall mean non-commercial programming produced by any Village of Pawling residents or organizations, schools and government entities and the use of designated facilities, equipment and/or channels of the Cable System in accordance with 47 U.S.C. 531 and this Renewal Franchise.

(v) Public Way – shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Village of Pawling, which shall entitle Franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Village of Pawling for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle Franchisee to the use thereof for the purposes of installing, operating, and maintaining Franchisee’s Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

(w) Renewal Franchise or Franchise – shall mean this Agreement and any amendments or modifications in accordance with the terms herein.

(x) Signal – shall mean any transmission which carries Programming from one location to another.

(y) Standard Installation – shall mean the standard one hundred fifty foot (150') aerial Drop connection to the existing distribution system.

(z) Subscriber – shall mean a Person who lawfully receives Cable Service with Franchisee's express permission.

(aa) Subscriber Network – shall mean the trunk and feeder signal distribution network over which video and audio signals are transmitted to Subscribers.

(bb) Village – shall mean the Village of Pawling, New York.

(cc) Trunk and Distribution System – shall mean that portion of the Cable System for the delivery of Signals, but not including Drop Cable(s) to Subscriber's residences.

(dd) Video Programming or Programming – shall mean the programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

**ARTICLE 2**  
**GRANT OF RENEWAL FRANCHISE**

**SECTION 2.1 - GRANT OF RENEWAL FRANCHISE**

(a) Pursuant to the authority of the Cable Act; Article 11 of the New York Public Service Law (“PSL”), as amended; and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended, the Franchising Authority hereby grants a non-exclusive Renewal Franchise to Comcast of New York, LLC, authorizing and permitting Franchisee to construct, operate and maintain a Cable Television System in the Public Way within the municipal limits of the Village of Pawling. Nothing in this Franchise shall be construed to prohibit Franchisee from offering any service over its Cable System that is not prohibited by federal or state law.

(b) This Renewal Franchise is granted under and in compliance with the Cable Act; Article 11 of the New York Public Service Law, as amended; and Title 16, Chapter VIII, Parts 890.60 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York, as amended; and in compliance with all rules and regulations of the FCC in force and effect during the period for which this Renewal Franchise is granted.

(c) Franchisee shall file applications for all necessary approvals from the Commission within sixty (60) days from the date the Franchise is granted or amended.

(d) Subject to the terms and conditions herein, the Franchising Authority hereby grants to Franchisee the right to construct, upgrade, install, operate and maintain a Cable Television System within the Public Way.

**SECTION 2.2 - TERM: NON-EXCLUSIVITY**

(a) The term of this non-exclusive Renewal Franchise shall be for a period of ten (10) years and shall commence on the date on which the State Commission issues a Certificate of Confirmation for said Renewal Franchise.

(b) Provided that Franchisee is in substantial compliance with this Agreement and all relevant rules and regulations related thereto, Franchisee is hereby given an option to renew this Franchise for one additional five (5) year period upon notice given to the Village of Franchisee's intention to exercise such option, provided such notice is given in accordance with 16 NYCRR §891 or as such regulations may be amended.

### **SECTION 2.3 - POLE AND CONDUIT ATTACHMENT RIGHTS**

Permission is hereby granted to Franchisee to attach or otherwise affix including, but not limited to cables, wire, or optical fibers comprising the Cable System to the existing poles and conduits on and under public streets and ways, provided Franchisee secures the permission and consent of the public utility companies to affix the cables and/or wires to their pole and conduit facilities. By virtue of this Franchise the Franchising Authority grants Franchisee equal standing with power and telephone utilities in the manner of placement of facilities on Public Ways.

### **SECTION 2.4 - RENEWAL**

(a) In accordance with the provisions of federal law, P.S.L. § 222 and applicable regulations, this Renewal Franchise shall be subject to additional renewals for the periods not to exceed fifteen (15) years or such other periods as allowed by law.

(b) In accordance with applicable law, any such renewal or renewals shall be upon mutual written agreement by Franchisee and the Franchising Authority and shall contain such modified or additional terms as Franchisee and the Franchising Authority may then agree.

### **SECTION 2.5 - RESERVATION OF AUTHORITY**

Nothing in this Renewal Franchise shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or bylaws/ordinances of general applicability and not specific to the Cable System, Franchisee, or this

Franchise, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Public Ways. This Franchise is a contract and except as to those changes which are the result of the Franchising Authority's lawful exercise of its general police power, the Franchising Authority may not take any unilateral action which materially changes the explicit mutual promises in this Franchise. Any changes to this Franchise must be made in writing signed by the Franchisee and the Franchising Authority. In the event of any conflict between this Franchise and any Franchising Authority ordinance or regulation that is not generally applicable, this Franchise shall control. Notwithstanding any other provision of this Franchise, Franchisee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the Franchising Authority that conflicts with its contractual rights under this Franchise, either now or in the future.

#### **SECTION 2.6 - NON-EXCLUSIVITY OF FRANCHISE**

(a) Franchisee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises or other authorizations to other Cable Service providers or wireline-based video service providers within the Village for the right to use and occupy the Public Ways or streets within the Village's jurisdiction.

(b) As set forth in 16 NYCRR Part 895.3, no municipality may award or renew a franchise for Cable Television Service which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchise operating in the same franchise area.

(c) The issuance of additional franchise(s) shall be subject to all applicable federal and state laws, including 16 NYCRR Part 895.3 and applicable regulations promulgated thereunder.

(d) In the event an application for a new cable television franchise or other authorization is filed with the Franchising Authority, proposing to serve the Village, in whole or in part, the Franchising Authority shall serve a copy of such application upon any existing Franchisee or incumbent cable operator by

registered or certified mail or via nationally recognized overnight courier service within a reasonable time thereafter.

(e) To the extent allowed by applicable law(s), the grant of any additional cable television franchise(s) or other authorization shall be on equivalent terms and conditions as those contained in this Renewal Franchise.

(f) In the event that Franchisee believes that any additional franchise(s) or other authorization has been granted on terms or conditions more favorable or less burdensome than those contained in this Renewal Franchise, the Franchisee shall provide the Franchising Authority with written reasons for its belief and commence the formal amendment process by written notice sent to the Village and to the Commission, as set forth in 16 NYCRR Part 892.

(g) Pursuant to 16 NYCRR Part 892-1.3, Franchising Authority shall convene a public hearing in accordance with State and local laws applicable to public hearing generally. At the public hearing, the Franchising Authority shall afford Franchisee an opportunity to demonstrate that any such additional franchise(s) or other authorization are on terms more favorable or less burdensome than those contained in this Renewal Franchise. Franchisee shall provide the Franchising Authority with such financial or other relevant information as is reasonably requested, provided, however, that the parties' counsel mutually and reasonably deem said information is non-proprietary.

(h) In the event that Franchisee demonstrates that an existing or future Cable Service provider or wireline-based video service provider in the Village has been provided relief by the Franchising Authority from any obligation of its franchise, Franchisee shall provide the Franchising Authority with written reasons for its belief and commence the formal amendment process by written notice sent to the Village and to the Commission, as set forth in 16 NYCRR Part 892.

(i) Pursuant to 16 NYCRR Part 892-1.3, Franchising Authority shall convene a public hearing in accordance with State and local laws applicable to public hearing generally. At the public hearing, the Franchising Authority shall afford Franchisee an opportunity to demonstrate that said existing or future Cable Service provider or wireline-based video service provider has been provided relief by the Franchising Authority from any obligation of its franchise. Franchisee shall provide the Franchising Authority with such

financial or other relevant information as is reasonably requested, provided, however, that the parties' counsel mutually and reasonably deem said information is non-proprietary.

(j) In the event that Cable Services or wireline video services are being provided to the Village by any Person(s) or Multichannel Video Programming Distributor ("MVPD") other than Franchisee, which is not in any way an affiliate of Franchisee, and such Person(s) or MVPD is not required by applicable law to be franchised by the Franchising Authority, and to the extent that Franchisee reports to the Franchising Authority, in writing, that the provision of such Cable Services by such Person(s) or MVPD is having a negative financial impact upon Franchisee's Cable System operations in the Village, Franchisee may request, in writing, that the Franchising Authority convene a public hearing on that issue, in accordance with State and local laws applicable to public hearings generally.

(i) Along with said written request, Franchisee shall provide the Franchising Authority with a written basis and written reasons for its determination of such negative impact. At the public hearing, the Franchising Authority shall afford Franchisee an opportunity to present the basis and the reasons for its determination. Franchisee shall provide the Franchising Authority with such financial and other relevant information as is reasonably requested, provided, however, that the parties' counsel mutually and reasonably deem said information is non-proprietary.

(ii) Should Franchisee demonstrate that the Cable Service(s) or wireline based video service of such Person(s) is having a negative financial impact upon Franchisee's Cable System operations in the Village, Franchisee shall commence the formal amendment process by written notice sent to the Village and to the Commission, as set forth in 16 NYCRR Part 892.

(k) Pursuant to 16 NYCRR Part 892-1.4, no amendment to Franchise Agreement shall be effective without the prior approval of the Commission.



## ARTICLE 3

### SYSTEM SPECIFICATIONS AND CONSTRUCTION

#### SECTION 3.1 - AREA TO BE SERVED

(a) Franchisee shall comply with 16 NYCRR Part 895.5 with regard to requirements for construction of cable television plant and provision of cable television services.

(b) Franchisee shall upon request make Cable Service available to every residential dwelling unit within the Village where the minimum density is at least fifteen (15) dwelling units per aerial mile and forty (40) dwelling units per underground mile providing however, that any request for plant extension is measured from the existing Trunk and Distribution System from which a usable Cable Service signal can be obtained and Franchisee is able to obtain from property owners any necessary easements and/or permits in accordance with Cable Act. For purposes of this section, a home shall only be counted as a "dwelling unit" if such home is within one hundred fifty feet (150') of the nearest distribution pole line within the Public Way. Upon written request from the Village, Franchisee shall conduct a survey to determine the number of dwelling units in the requested area and shall inform the Village of the survey results and applicable costs to extend Service to the area. Upon written request from the Village, Franchisee shall conduct a survey to determine the number of dwelling units in the requested area and shall inform the Village of the survey results and applicable costs to extend Service to the area.

(c) Franchisee shall make service available to multiple dwelling units (MDU) upon request and where economically feasible provided that Franchisee is able to obtain from the property owners any necessary easements, permits and agreements to provide Service to said MDU. Subject to the density requirement, Franchisee shall upon request offer Cable Service to all new homes or previously unserved homes located within one hundred fifty feet (150') of Franchisee's Trunk and Distribution System. For non-Standard Installations Franchisee shall offer said Service within ninety (90) days of a Subscriber requesting such for aerial installations and one hundred eighty (180) days, weather permitting, of a Subscriber

requesting such for underground installations. With respect to areas of the Village which are currently served by Franchisee from a contiguous cable television system or currently unserved but could be served by abutting town(s) served by Franchisee, Franchisee shall have the option to serve such areas from its cable television system in such abutting town(s).

(d) Access to Cable Service will not be denied to any group of potential residential subscribers because of income of the residents of the local area in which such group resides.

(e) Installation costs shall conform with the Cable Act. Any dwelling unit within an aerial one hundred fifty feet (150') of the Trunk and Distribution System shall be entitled to a Standard Installation rate in accordance with applicable federal and state laws. Underground installs are considered non-standard installations. All non-standard installations shall be provided at a rate established by the Franchisee in accordance with applicable federal and state laws.

(f) Subject to the provisions of this Article 3 and provided Franchisee has at least ninety (90) days' prior written notice concerning the opening of residential subdivision trenching, or of the installation of conduit for the location of utilities, it may install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame. If a substantial quantity of cable is required for a large subdivision and said quantity is not in stock, Franchisee shall be allowed additional time for said installation. The Franchising Authority, or its designee, shall exercise reasonable efforts to have the Planning Board and developers give timely written notice of trenching and underground construction to Franchisee. Developer shall be responsible for the digging and back-filling of all trenches.

### **SECTION 3.2 - SUBSCRIBER NETWORK**

Franchisee shall maintain a Cable Television System, fully capable of providing Cable Service in accordance with applicable law.

### SECTION 3.3 SUBSCRIBER NETWORK CABLE DROPS

(a) The Franchisee shall maintain the current level of existing active drops, outlets and Standard Cable Service, at no charge to the Village, to each public building, as designated by the Franchising Authority within the Village, listed in **Exhibit A** attached hereto, provided such are considered to be a Standard Installation.

(b) Franchisee shall provide one (1) drop, outlet and Standard Cable Service at no charge to all new public buildings and other Village owned public buildings, along the distribution cable subject to the limitations set forth above. The Franchising Authority or its designee shall consult with a representative of the Franchisee to determine the appropriate location for each outlet prior to requesting that the Franchisee install the free service.

(c) Nothing in this Section shall require the Franchisee to move existing drops or outlets, or to install an additional drop or outlet, at no cost, to any listed location in Exhibit A. In the event the Franchisee is required to move an existing drop or outlet or to install an additional drop or outlet to a location listed in **Exhibit A**, Franchisee may charge the Village for such move or installation based on Franchisee's cost for time and materials, plus a reasonable return on investment.

(d) Standard Cable Services described in this section are in-kind obligations that constitute a portion of the Franchise Fee and count against the maximum franchise fee cap of five percent (5%) established by 47 USC § 542.

(e) In accordance with applicable law, the marginal cost of the Standard Cable Services for the locations listed on **Exhibit A** attached hereto may be (i) recovered from Subscribers as a franchise fee, (ii) deducted from quarterly franchise fee payments made to the Franchise Authority, or (iii) invoiced to the Franchise Authority for payment, with the marginal cost of the services being disclosed to the Franchise Authority in advance.

(f) Franchisee shall notify Franchise Authority in writing regarding the amount of the monthly service fee for each location listed on **Exhibit A** based on the marginal cost of the services. The Franchising Authority shall notify Franchisee within sixty (60) days from receipt of such notice of marginal cost whether Franchise Authority wants the amount due each month to be implemented as a franchise fee, invoiced for payment, or deducted from quarterly franchise fee payments on a prospective basis.

#### **SECTION 3.4 - PARENTAL CONTROL CAPABILITY**

(a) Pursuant to applicable law, upon request, and at no separate, additional charge, Franchisee shall provide Subscribers with the capability to control the reception of any channel on the Cable System.

(b) The Franchising Authority acknowledges that the parental control capability may be part of a converter box and Franchisee may charge Subscriber for use of said converter box.

#### **SECTION 3.5---EMERGENCY ALERT OVERRIDE CAPACITY**

Franchisee shall comply with the FCC's Emergency Alert System ("EAS") regulations.

## ARTICLE 4

### TECHNOLOGICAL AND SAFETY STANDARDS

#### SECTION 4.1 - SYSTEM MAINTENANCE

(a) In installing, operating and maintaining equipment, cable and wires, Franchisee shall avoid damage and injury to trees, structures and improvements in and along the routes authorized by the Franchising Authority, except as may be approved by the Franchising Authority if required for the proper installation, operation and maintenance of such equipment, cable and wires.

(b) The construction, maintenance and operation of the Cable System for which this Renewal Franchise is granted shall be done in conformance with all applicable state and federal laws, bylaws/ordinances, codes and regulations of general applicability and the rules and regulations of the FCC as the same exist or as same may be hereafter changed or amended.

(c) Franchisee shall install and maintain its equipment, cable and wires in such a manner as shall not interfere with any installations of the Village or any public utility serving the Village.

(d) All structures and all equipment, cable and wires in, over, under, and upon streets, sidewalks, alleys, and public rights of ways of the Village, wherever situated or located shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

#### SECTION 4.2 - REPAIRS AND RESTORATION

Whenever Franchisee takes up or disturbs any pavement, sidewalk or other improvement of any public right of way or public place, the same shall be replaced and the surface restored in as good condition as possible as before entry as soon as practicable. If Franchisee fails to make such restoration within a reasonable time, the Franchising Authority may fix a reasonable time for such restoration and repairs, and shall notify Franchisee in writing of the restoration and repairs required and the time fixed for the performance thereof. Upon failure of Franchisee to comply within the time specified, the Franchising Authority may cause proper restoration and repairs to be made and the expense of such work shall be paid

by Franchisee upon written demand by the Franchising Authority. Prior to such repair or restoration, the Village shall submit a written estimate to Franchisee of the actual cost of said repair or restoration.

#### **SECTION 4.3 - CABLE LOCATION**

(a) In all areas of the Village where all of the transmission and distribution facilities of all public or municipal utilities are installed underground, Franchisee shall install its Cable System underground, provided that such facilities are actually capable of receiving the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality.

(b) In all areas of the Village where public utility lines are aerially placed, if subsequently during the term of the Renewal Franchise such public utility lines are required by the Franchising Authority or State to be relocated aerially or underground, Franchisee shall similarly relocate its Cable System if it is given reasonable notice and access to the public and municipal utilities facilities at the time that such are placed underground. Any costs incurred by Franchisee for relocating the Cable System shall be reimbursed to Franchisee in the event public or private funds are raised for the project and made available to other users of the Public Way. If funds are not made available for reimbursement, Franchisee reserves the right to pass through its costs to Subscribers.

(c) Nothing in this Section shall be construed to require Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

#### **SECTION 4.4 - TREE TRIMMING**

Franchisee shall have authority to trim trees upon and overhanging public streets, alleys, sidewalks and ways and places of the Village to prevent the branches of such trees from coming in contact with the wires, cables and equipment of Franchisee, in accordance with any Village bylaws/ordinances and regulations.

#### **SECTION 4.5 – STRAND MAPS**

Franchisee shall maintain a complete set of strand maps of the Village, which will show those areas in which its facilities exist. The strand maps will be retained at Franchisee's primary place of business and will be available to the Franchising Authority for inspection by the Franchising Authority upon written request.

#### **SECTION 4.6 - BUILDING MOVES**

(a) In accordance with applicable laws, Franchisee shall, upon the written request of any Person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of the building(s). Franchisee shall be given not less than thirty (30) days' advance written notice to arrange for such temporary wire changes. The cost to raise or lower wires shall be borne by the Person(s) holding the building move permit.

(b) Franchisee shall have the right to reimbursement under any applicable insurance or government program for reimbursement.

#### **SECTION 4.7 - DISCONNECTION AND RELOCATION**

(a) In accordance with applicable law, Franchisee shall, at its sole cost and expense, protect, support, temporarily disconnect, relocate in the same street, or other Public Right of Ways, or remove from any street or any other Public Ways and places, any of its property as required by the Franchising Authority by reason of traffic conditions, public safety, street construction, change or establishment of street grade, or the construction of any public improvement or structure by any Village department acting in a lawful governmental capacity.

(b) In requiring Franchisee to protect, support, temporarily disconnect, relocate or remove any portion of its property, the Franchising Authority shall treat Franchisee the same as, and require no more of Franchisee, than any other similarly situated utility.

(c) Franchisee shall have the right to reimbursement of project costs under any applicable insurance or government program for reimbursement. All cable operators and public or municipal utility companies shall be treated alike if reimbursed for such costs by the Village. If funds are not reimbursed, Franchisee reserves the right to pass its costs through to Subscribers.

#### **SECTION 4.8 - EMERGENCY REMOVAL OF PLANT**

(a) If, at any time, in case of fire or disaster in the Village, it shall be necessary in the reasonable judgment of the Franchising Authority to cut or move any of the wires, cable or equipment of the Cable Television System, the Village shall have the right to do so without cost or liability, provided however that, wherever possible, the Franchising Authority shall give Franchisee written notice and the ability to relocate wires, cable or other equipment.

(b) Franchisee shall have the right to reimbursement under any applicable insurance or government program for reimbursement. All cable operators or public or municipal utility companies shall be treated alike if reimbursed for such costs by the Village. If funds are not reimbursed, Franchisee reserves the right to pass its costs through to Subscribers.



**ARTICLE 5**  
**PROGRAMMING**

**SECTION 5.1 - BASIC CABLE SERVICE**

Franchisee shall make available a Basic Cable Service tier to all subscribers in accordance with 47 U.S.C. 534.

**SECTION 5.2 - PROGRAMMING**

(a) Pursuant to 47 U.S.C. 544, Franchisee shall maintain broad categories of Video Programming as set forth in **Exhibit B**. Pursuant to federal law, all Video Programming decisions, excluding PEG Access Programming, are at the sole discretion of Franchisee.

(b) Franchisee shall comply with applicable FCC Rules and Regulations, P.S.L. § 224-a, and 16 NYCRR 890.80 regarding notice of programming changes. Advance notice shall not be required for the launch of new channels when offered on a subscription basis or added to an existing service tier at no additional cost to the customer. Written notices required by this section may be provided electronically as permitted by 47 C.F.R. § 76.1600.

**SECTION 5.3 – CABLE CHANNELS FOR COMMERCIAL USE**

Pursuant to 47 U.S.C. 532, Franchisee shall make available channel capacity for commercial use by persons unaffiliated with Franchisee. Rates for use of commercial leased access channels shall be negotiated between Franchisee and the commercial user in accordance with federal law. Franchisee shall have no editorial control over the content of programming on leased access channels and are not subject to any liability therefrom.

## ARTICLE 6

### PEG ACCESS CHANNEL(S) AND SUPPORT

#### SECTION 6.1 - PEG ACCESS CHANNEL(S)

(a) Franchisee shall comply with minimum standards for Public, Educational and Governmental (PEG) access channels by continuing to provide the technical ability to playback pre-recorded programming and to transmit programming consistent with Section 895.4 of the Rules of the State Commission.

(b) Use of a video channel for PEG Access Programming shall be provided in accordance with federal law, 47 U.S.C. 531, and as further set forth below. Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. A PEG Access User – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of a particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a PEG Access Channel, except Franchisee may refuse to transmit any Public Access program or portion of a Public Access program that contains obscenity, indecency, or nudity pursuant to Section 611 of the Cable Act. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for PEG Access Channel use which shall ensure that PEG Access Channel(s) and PEG Access equipment will be available on a first-come non-discriminatory basis.

(c) Franchisee shall continue to make available one (1) channel as a Public Access Channel to be used for Public Access Programming. A Public Access Channel may not be used to cablecast for-profit, political or commercial programs in any fashion. Unused capacity may be utilized by Franchisee subject to the provisions set forth in subsection (e) below.

(d) Franchisee shall continue to make available one (1) channel as an Educational/Governmental Access Channel to be used for educational and governmental access video programming provided by the Franchising Authority or designated educational institution. An Educational/Governmental Access Channel

may not be used to cablecast for-profit, political or commercial programs in any fashion. Unused capacity may be utilized by Franchisee subject to the provisions set forth in subsection (e) below.

(e) Should the Village or designated educational institution begin cablecasting Educational/Governmental Access video programming, the Village or designated educational institution will be responsible for delivering said programming to Franchisee's headend, where Franchisee will be responsible for transmitting said programming onto the Subscriber Network. The Village acknowledges that it shall be responsible for the costs associated with construction of necessary video return lines, origination of programming and related equipment costs, necessary to allow for cablecasting from an origination point within or outside of the Village. Said payment shall be made in advance to the Franchisee subject to the provision to the Village of a detailed cost estimate.

(f) In the event the Franchising Authority or other PEG Access User elects not to fully program a PEG Access Channel(s) with original PEG Access Programming, Franchisee may reclaim any unused time on those channels.

## **SECTION 6.2 - PROGRAMMING EXCLUSIVITY AND NON-COMPETITION**

The Franchising Authority, or its designee, agrees that it will not use its designated PEG Access channel(s), equipment, or other facilities to provide for-profit commercial services which have the effect of competing with Franchisee's business. In addition, any Video Programming produced under the provisions of this Article 6 shall not be commercially distributed to a competing Multichannel Video Programming Distributor without the written consent of Franchisee.

## **SECTION 6.3 – INTERCONNECTION WITH COMPETING CABLE FRANCHISEE**

In the event a Franchise is issued by the Franchising Authority to a competing Franchisee, the competing Franchisee may not connect its system to Franchisee's Cable System for purposes of obtaining PEG Access Programming from the Franchisee's PEG Access channels without the prior written consent of Franchisee.

#### **SECTION 6.4 - PEG ACCESS PROGRAMMING INDEMNIFICATION**

The Franchising Authority and/or the Access Provider shall indemnify the Franchisee for any liability, loss or damage it may suffer due to violation of the intellectual property rights of third parties or arising out of the content of programming aired on any PEG channel and from claims arising out of the Franchising Authority's rules for or administration of PEG Access Programming.

#### **SECTION 6.5 – FRANCHISE RELATED COST**

The Franchising Authority acknowledges that under the Cable Act, certain franchise related costs, including but not limited to costs of providing PEG Access channel capacity, transmitting PEG Access programming, the cost to construct video return lines from and to video origination sites, the cost to activate and maintain PEG channels, as well as any other costs arising from the provision of PEG services, and the cost of other franchise requirements may be recovered in accordance with applicable law.

## **ARTICLE 7**

### **CUSTOMER SERVICE AND CONSUMER PROTECTION**

#### **SECTION 7.1 - CUSTOMER SERVICE**

Franchisee shall comply with all customer service regulations of the FCC (47 CFR §76.309) as they exist or as they may be amended from time to time. Likewise, Franchisee shall comply with the customer service regulations promulgated by the State Commission in 16 NYCRR Part 890 as they exist or as they may be amended from time to time.

#### **SECTION 7.2 – SERVICE INTERRUPTIONS**

Franchisee shall comply with 16 NYCRR Part 890.65 with respect to credits provided to customers affected by service outages in excess of four (4) continuous hours.

#### **SECTION 7.3 - PROTECTION OF SUBSCRIBER PRIVACY**

Franchisee shall comply with applicable federal and state privacy laws and regulations, including 47 U.S.C. 551.

#### **SECTION 7.4 – PROPRIETARY INFORMATION**

Notwithstanding anything to the contrary set forth in this Franchise, Franchisee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Franchisee as confidential and only to disclose it to those employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise and who shall agree to maintain the confidentiality of all such information. Franchisee shall not be required to provide Subscriber information in violation of 47 U.S.C. 551 or any other applicable federal or state privacy law. For purposes of this Section, the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to

FCC rules, or other information that is reasonably determined by Franchisee to be competitively sensitive. In the event that the Franchising Authority receives a request under a state "sunshine," public records or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the Franchising Authority shall notify Franchisee of such request and cooperate with Franchisee in opposing such request.

#### **SECTION 7.5 - EMPLOYEE IDENTIFICATION CARDS**

All of Franchisee's employees, including repair and sales personnel, entering private property shall be required to carry an employee identification card issued by Franchisee.

**ARTICLE 8**  
**PRICES AND CHARGES**

**SECTION 8.1 - PRICES AND CHARGES**

(a) All rates, fees, charges, deposits and associated terms and conditions to be imposed by Franchisee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC rate regulations [47 U.S.C. 543]. Before any new or modified rate, fee, or charge is imposed, Franchisee shall follow the applicable FCC and State [P.S.L. 224-a] notice requirements and rules and notify affected Subscribers, which notice may be by any means permitted under applicable law. Nothing in this Renewal Franchise shall be construed to prohibit the reduction or waiver of charges in conjunction with promotional campaigns for the purpose of attracting or retaining Subscribers.

(b) The Franchising Authority acknowledges that under the Cable Act, certain costs of Public, Educational and Governmental ("PEG") Access and other Franchise requirements may be passed through to the Subscribers in accordance with federal law.

**ARTICLE 9**  
**REGULATORY OVERSIGHT**

**SECTION 9.1 - INDEMNIFICATION**

Franchisee shall indemnify, defend and hold harmless the Franchising Authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of Franchisee's construction, operation, maintenance or removal of the Cable System, including, but not limited to, reasonable attorney's fees and costs, provided that the Franchising Authority shall give Franchisee timely (best efforts of 10 business days) written notice of its obligation to indemnify and defend the Franchising Authority within the timely receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority. The Franchisee shall not be required to Indemnify the Franchising Authority for any claims resulting from acts of willful misconduct or negligence on the part of the Franchising Authority.

**SECTION 9.2 - INSURANCE**

(a) Franchisee shall carry Commercial General Liability insurance throughout the term of this Renewal Franchise and any removal period with an insurance company authorized to conduct business in New York protecting, as required in this Renewal Franchise, Franchisee and listing the Village as an additional insured, against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of its Cable System. The amount of such insurance against liability for personal injury and property damage shall be no less than One Million Dollars (\$1,000,000) as to any one occurrence. The amount of such insurance for excess liability shall be Five Million Dollars (\$5,000,000) in umbrella form.



(b) Franchisee shall carry insurance against all claims arising out of the operation of motor vehicles in the amount of One Million Dollars (\$1,000,000) combined single limit for bodily injury and consequent death and property damage per occurrence;

(c) All insurance coverage, including Workers' Compensation, shall be maintained throughout the period of this Renewal Franchise. All expenses incurred for said insurance shall be at the sole expense of Franchisee.

(d) Franchisee shall provide the Franchising Authority upon request with certificate(s) of insurance for all policies required herein upon expiration of policies.

### **SECTION 9.3 - FRANCHISE FEES**

(a) Franchisee shall pay a Franchise Fee to the Village, throughout the term of this Renewal Franchise equal to three percent (3%) of Franchisee's Gross Annual Revenue.

(b) The Franchise Fee shall be paid semi-annually to the Village throughout the term of this renewal Franchise, no later than forty-five (45) days from the last date of the calculation period in each year of this Franchise Renewal.

(c) In accordance with Section 622(b) of the Cable Act, Franchisee shall not be liable for a total financial commitment pursuant to this Renewal Franchise and applicable law in excess of five percent (5%) of its Gross Annual Revenues; provided, however, that said five percent (5%) shall include (i) any funding provided by Franchisee to the Franchising Authority, or its designee(s), to be used for PEG Access operations, (ii) any amounts included in the term "Franchise Fee" pursuant to Section 622(g)(1) of the Cable Act, but shall not include (i) interest due herein to the Franchising Authority because of late payments; and (ii) any other exclusion to the term "Franchisee Fee" pursuant to Section 622(g)(2) of the Cable Act.

(d) All payments by Franchisee to the Village pursuant to this Section shall be made payable to the Village and deposited with the Village Treasurer unless otherwise agreed to in writing by the parties.

#### **SECTION 9.4 - EQUAL EMPLOYMENT OPPORTUNITY**

Franchisee is an Equal Opportunity Employer and shall comply with applicable FCC regulations with respect to Equal Employment Opportunities.

#### **SECTION 9.5 - REVOCATION OF FRANCHISE**

The Franchise issued hereunder may, after due written notice and hearing per Section 9.8 (Notice and Opportunity to Cure), be revoked by the Franchising Authority for any substantial violation of any material provision of this Agreement; for defrauding or attempting to defraud the Village or Subscribers; or for any other material breach of this Agreement; or by the State Commission in accordance with P.S.L. § 227.

#### **SECTION 9.6 - NOTICE AND OPPORTUNITY TO CURE**

If the Franchising Authority has reason to believe that Franchisee has defaulted in the performance of any or several material provisions of this Renewal Franchise, except as excused by Force Majeure, the Franchising Authority shall notify Franchisee in writing, by certified mail, of the material provision or provisions which the Franchising Authority believes may have been in default and the details relating thereto. Franchisee shall have thirty (30) days from the receipt of such notice to:

(a) Respond to the Franchising Authority in writing, contesting the Franchising Authority's assertion of default and providing such information or documentation as may be necessary to support Franchisee's position; or

(b) Cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such thirty (30) day period, to take reasonable steps to cure said default and diligently continue such efforts until said default is cured. Franchisee shall report to the Franchising Authority, in writing, by certified mail, at forty-five (45) day intervals as to Franchisee's efforts, indicating the steps taken by Franchisee to cure said default and reporting Franchisee's progress until such default is cured.

(c) In the event that (i) Franchisee fails to respond to such notice of default; and/or (ii) Franchisee fails to cure the default or to take reasonable steps to cure the default within the required forty-five (45) day period; the Franchising Authority or its designee shall promptly schedule a public hearing no sooner than fourteen (14) days after written notice, by certified mail, to Franchisee. Franchisee shall be provided reasonable opportunity to offer evidence, question witnesses, if any, and be heard at such public hearing.

(d) Within thirty (30) days after said public hearing, the Franchising Authority shall issue a written determination of its findings. In the event that the Franchising Authority determines that Franchisee is in such default, the Franchising Authority may determine to pursue any lawful remedy available to it.

(e) If (i) the Franchising Authority fails to issue a written reply within 30 days accepting or rejecting Franchisees' response pursuant to 9.8(a) above; (ii) the Franchising Authority fails to issue a written acknowledgement after Franchisee's notice that it cured said default pursuant to 9.8(b) above; and/or (iii) the Franchising Authority fails to schedule a public hearing no later than thirty (30) days of having sent a written notice consistent with Section 9.8(c) above and/or (iv) the Franchising authority fails to issue a written determination with thirty (30) days after the public hearing pursuant to Section 9.8(d) above, then the issue of said default against Franchisee by the Franchising Authority shall be considered null and void.

#### **SECTION 9.7 - TRANSFER OR ASSIGNMENT**

(a) This Renewal Franchise shall not be transferred or assigned without the prior written notice to the Franchising Authority, which consent shall not be arbitrarily or unreasonably withheld.

(b) In accordance with P.L. §222, transfer of this Renewal Franchise shall not be effective without the prior approval of the Commission.

(c) A transfer or assignment of a franchise or control thereof between commonly controlled entities, between affiliated companies, or between parent and subsidiary corporations, shall not constitute a transfer or assignment of a franchise or control thereof. An "affiliated company" is any person or entity that directly or indirectly or through one or more intermediaries, controls, is controlled by, or is under common control with another person or entity. The application for consent to an assignment or transfer

shall be signed by Franchisee and by the proposed assignee or transferee or by their representatives, evidence of whose authority shall be submitted with the application. Within thirty (30) days of receiving a request for consent, the Village shall, in accordance with State and FCC rules and regulations, notify Franchisee in writing of the additional information, if any, it requires to determine the legal, financial, technical and managerial qualifications of the transferee or new controlling party. If the Village has not taken action on Franchisee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed given. Any proposed controlling or owning Person or transferee approved by the Franchising Authority shall be subject to all terms and conditions contained in this Renewal Franchise.

#### **SECTION 9.8 - REMOVAL OF SYSTEM**

Upon termination of this Renewal Franchise or denial of any renewal hereof by passage of time or otherwise in accordance with applicable law and after all appeals from any judicial determination are exhausted and final, Franchisee shall remove its supporting structures, poles, transmission and distribution systems and other appurtenances from the streets, ways, lanes, alleys, parkways, bridges, highways, and other public and private places in, over, under, or along which they are installed and shall restore the areas to their original condition. If such removal is not completed within six (6) months of such termination, the Franchising Authority or property owner may deem any property not removed as having been abandoned. Notwithstanding the above, Franchisee shall not be required to remove its Cable System, or to relocate the Cable System, or to sell the Cable System, or any portion thereof as a result of termination, denial of renewal, or any other lawful action to forbid or disallow Franchisee from providing Cable Service, if the Cable System is actively being used to facilitate any other services not governed by the Cable Act.

#### **SECTION 9.9 - INCORPORATION BY REFERENCE**

(a) All presently and hereafter applicable conditions and requirements of federal and state law, including but not limited to the rules and regulations of the FCC and the State of New York (Article 11 of Chapter 48 of the New York Consolidated Laws), as they may be amended from time to time, are incorporated herein by reference, to the extent not enumerated herein.

(b) Should the State, the federal government or the FCC require Franchisee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Franchising Authority and Franchisee will thereupon, if they determine that a material provision herein is affected, modify any of the provisions herein to reflect such government action.

**SECTION 9.10 - NO THIRD-PARTY BENEFICIARIES**

Nothing in this Renewal Franchise is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Renewal Franchise.

**ARTICLE 10**  
**MISCELLANEOUS**

**SECTION 10.1 - SEVERABILITY**

If any section, subsection, sentence, clause, phrase, or other portion of this Renewal Franchise is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**SECTION 10.2 - FORCE MAJEURE**

If for any reason of force majeure Franchisee is unable in whole or in part to carry out its obligations hereunder, said Franchisee shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this Renewal Franchise, the term "force majeure" as used herein shall have the following meaning: strikes; acts of god; acts of public enemies, orders of any kind of the government of the United States of America or of the State of New York or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; pandemics; public health emergencies; landslides; lightning; earthquakes; tornados; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts, environmental restrictions, arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of materials and/or essential equipment, environmental restrictions or any other cause or event not reasonably anticipated or within Franchisee's control.

**SECTION 10.3 - NOTICES**

(a) Every notice to be served upon the Franchising Authority shall be shall be sent by certified mail, nationally recognized overnight courier service or other means as allowed by applicable law and providing for

a receipt as proof of delivery to the following address or such other address as the Franchising Authority may specify in writing to Franchisee.

Village of Pawling  
Attn: Mayor  
9 Memorial Avenue  
Pawling, NY 12564

(b) Every notice served upon Franchisee shall be delivered or sent by certified mail (postage prepaid) or nationally recognized overnight courier service to the following address or such other address as Franchisee may specify in writing to the Franchising Authority.

Comcast Cable Communications, Inc.  
Attn: VP, Government/Regulatory Affairs & Community Impact  
222 New Park Drive  
Berlin, CT 06037

with copies to:

Comcast Cable Communications, Inc.  
Attn: Vice President, Government Affairs  
676 Island Pond Road  
Manchester, NH 03109

Comcast Cable Communications, Inc.  
Attn: Government Affairs  
One Comcast Center  
Philadelphia, PA 19103

(c) Delivery of such notices shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of receipt.

#### **SECTION 10.4 - ENTIRE AGREEMENT**

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed without written amendment signed by the Franchising Authority and the Franchisee. Any franchise agreements, agreements, ordinances, representations, or understandings or parts of such measures that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

## **SECTION 10.5 - CAPTIONS**

The captions to sections throughout this Renewal Franchise are intended solely to facilitate reading and reference to the sections and provisions of the Renewal Franchise. Such sections shall not affect the meaning or interpretation of the Renewal Franchise.

## **SECTION 10.6 – WARRANTIES**

The Franchisee warrants, represents and acknowledges that, as of the Effective Date of this Renewal Franchise:

- (a) The Franchisee is duly organized, validly existing and in good standing under the laws of the State;
- (b) The Franchisee has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the date of execution of this Renewal Franchise, to enter into and legally bind the Franchisee to this Renewal Franchise and to take all actions necessary to perform all of its obligations pursuant to this Renewal Franchise;
- (c) This Renewal Franchise is enforceable against the Franchisee in accordance with the provisions herein; and
- (d) There is no action or proceedings pending or threatened against the Franchisee which would interfere with performance of this Renewal Franchise.

## **SECTION 10.7 - APPLICABILITY OF RENEWAL FRANCHISE**

All of the provisions in this Renewal Franchise shall apply to the Village, Franchisee, and their respective successors and assigns.



WITNESS OUR HANDS AND OFFICIAL SEAL, THIS \_\_\_\_\_ DAY OF

\_\_\_\_\_ 2023.

**VILLAGE OF PAWLING**

By:

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

**COMCAST OF NEW YORK, LLC**

By:

\_\_\_\_\_  
Carolyne Hannan  
Senior Vice President  
Western New England Region

**EXHIBIT A**

**PUBLIC BUILDINGS ON THE CABLE SYSTEM**

Municipal Buildings:

Village Hall

Library

Fire Department

**EXHIBIT B**  
**PROGRAMMING**

Franchisee shall provide the following broad categories of Video Programming:

- News Programming;
- Sports Programming;
- Public Affairs Programming;
- Children's Programming;
- Entertainment Programming; and
- Local Programming.

PAWLING VILLAGE GREEN AND PUBLIC ASSEMBLY EVENTS PERMIT  
APPLICATION FOR PERMISSION TO USE PUBLIC PROPERTY WITHIN THE VILLAGE

The purpose of this application form is to aid in the application and review process. However, it is not designed to cover every possible circumstance. The Village Board may require additional information in order to approve an application.

Application Date 6/21/23 (application must be filed at least 60 days prior to the event)

Name of Entity "Applicant" requesting permission Pawling Resource Center  
Contact Person Olga Brandenberger Connection with the event Executive Director  
Address (126 E Main St) P.O. Box 331 Pawling NY 12564  
Phone 845-855-3459  
Email Pawlingresource@gmail.com

Event Date 9/16/23 Event Time and Duration 10-12 noon  
Event Purpose Fundraiser - Annual Walkathon  
The purpose of the requesting entity  for-profit  non-profit  political  other \_\_\_\_\_

Expected number of participants \_\_\_\_\_ Will the event be open to the general public?  Yes  No  
If not, who are the expected participants? \_\_\_\_\_  
NOTE: non-participating members of the public may not be excluded from the Green or other public areas

Will there be entertainment or a speaker?  Yes  No. If so, describe not on green

Will food or beverages be served?  Yes  No. If so describe not on green  
Food vendors must have all applicable health department permits.  
NOTE: no alcoholic beverages may be consumed on the Village Green or other public areas without specific approval of the Village Board of Trustees.

Please describe any other activities taking place during the event walk thru village

Will there be supplemental illumination or other electrical equipment?  Yes  No  
If so, describe items and power source \_\_\_\_\_  
NOTE: permission must be obtained from the Village to use public power sources - \$20 fee

Will there be signage used?  Yes  No. If so, describe form and content lawn signs only - not on green

What provisions will be made to handle litter or refuse resulting from the event?  
none needed

What provisions will be made to handle proper sanitation for the event?  
none needed

Are there any structures, tents, booths, tables or other large objects planned as part of the event? Yes  No   
If so, describe the size, material, location, use, the method (if any) by which they are fixed in place, and how long they will be in place before and after the event. Draw your plan on the attached map.  
NOTE: public walkways and seating may not be obstructed

**The Village Board grants permission for the above named Entity to hold the above named Event on the above named Date.**

Village Clerk: \_\_\_\_\_ Date \_\_\_\_\_  
Printed Name \_\_\_\_\_ Date \_\_\_\_\_  
Entity Representative Olga Brandenberger Date 6/21/23  
Printed Name Olga Brandenberger

By signing this application, Applicant agrees to all of the terms and conditions of the Village Green and Public Assembly Events Policy.