

**THE REGULAR MEETING
OF THE VILLAGE OF NEW HARTFORD
BOARD OF TRUSTEES
WAS HELD ON MAY 8, 2023 IN
NEW HARTFORD, NEW YORK**

1. Mayor Ryan opened the Regular Meeting with the Pledge of Allegiance to the Flag at 7:00 pm.

VILLAGE BOARD MEMBERS PRESENT:

Mayor Donald J. Ryan
Trustee Andrew N. Alesia
Trustee David W. Butler
Trustee John J. Grygiel
Trustee Richard C. Sherman

VILLAGE OFFICIALS PRESENT: Assistant Fire Chief James Monahan, Attorney Gustave DeTraglia, DPW Superintendent Tom Hughes, Village Clerk Sarah Dobson, Lieutenant Michael Kowalski

ABSENT: Fire Chief Thomas Bolanowski, Treasurer Daniel Dreimiller, Codes Enforcer Gary Schreppel

2. **MINUTES:** Trustee Grygiel introduced the following Resolution for adoption and was duly seconded by Trustee Butler:

RESOLUTION 2023-6

RESOLVED, that the Village of New Hartford Board does hereby approve the April 10, 2023 Village Board Meeting Minutes.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

3. **FINANCIAL:**
 - A. **TREASURER'S REPORT:** Treasurer Dreimiller submitted the May 8, 2023 report (copy attached).

- B. **ABSTRACT:** Trustee Sherman introduced the following Resolution for adoption and was duly seconded by Trustee Grygiel:

RESOLUTION 2023-7

RESOLVED, that the Village of New Hartford Board does hereby approve the Abstract from May 8, 2023.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

4. **DEPARTMENT REPORTS:**

A. **FIRE DEPARTMENT:**

- I. Assistant Chief Monahan presented the following report:

Summary Incident Report 4/1 – 4/30/23

Total Incidents	110
-----------------	-----

Monthly Incident Report 4/1 – 4/30/23

Town	90
<u>Village</u>	<u>20</u>
Total Incidents	110

- II. Assistant Chief Monahan notified the Board that the Benevolent Association has purchased another Suburban. It will need to be painted and outfitted for the Fire Department. It will then be donated to the Village. Most of the work will be done in house or locally. He is expecting it to be donated in June 2023.
- III. Trustee Butler introduced the following Resolution for adoption and it was duly seconded by Trustee Sherman:

RESOLUTION 2023-8

RESOLVED, that the Village of New Hartford does hereby approve the following New Hartford Fire Department members:

Matthew McHarris, 80 Genesee Street
Eric Sloma, 3 Craig Ave
Daniel Achen, 1 Bonnie Ave (restricted member)

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

B. POLICE DEPARTMENT:

- I. Lieutenant Kowalski gave a verbal report on the activities this month.

Community Police Contacts	4
Harassment	1
MVA	4
Welfare Check	2
Alarms	2
Animal Control	1
Assist a Resident	1
Mental Health Arrest	1
Traffic Stops	16
Criminal Mischief	2
<u>Petit Larceny</u>	<u>3</u>
Total Calls Received	37

C. DEPARTMENT OF PUBLIC WORKS:

Superintendent Hughes gave a report on the happenings of the DPW.

- I. The DPW has completed the spring curb junk pickup. Due to confusion regarding the day of pickup, the DPW will also pickup junk next Monday for the residents who did not get junk out this week.
- II. Milling and paving has been completed on Bohling, Pearl, upper Paris, the DPW Garage parking lot, and the Fire Department parking lot.

- III. Mike from the NYSDOT has reached out regarding the sidewalk and curbing project. He said the DOT would fund all the curbing for the project and asked that the Village fund the sidewalk and pavers.
- IV. Superintendent Hughes had a survey company come work up an easement to fix storm drain at 68 Paris Road. The resident stated there was flooding after the last rain.
- V. The radar sign was ordered and should be delivered soon. It is battery powered so it will be moved easily. The batteries are rechargeable and last approximately 3 weeks at a time.
- VI. The brackets for the Hometown Heroes banners will be delivered tomorrow. The DPW will get them hung and ready for the banners.
- VII. Trustee Sherman introduced the following Resolution for adoption and it was duly seconded by Trustee Alesia:

RESOLUTION 2023-9

RESOLVED, that the Village of New Hartford does hereby approve the stormwater management program’s annual MS4 report summarizing progress made towards implementing the conditions of the Village SPDES general permit GP-10-002 for stormwater discharges from municipal storm sewers for the year ending March 9, 2023.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

D. PLANNING BOARD:

- I. Trustee Butler introduced the following Resolution for adoption and it was duly seconded by Trustee Grygiel:

RESOLUTION 2023-10

RESOLVED, that the Village of New Hartford does hereby approve the addition of 6 parking spots (up to 8) behind 96 Genesee Street.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

- II. Trustee Sherman introduced the following Resolution for adoption and it was duly seconded by Trustee Alesia:

RESOLUTION 2023-11

RESOLVED, that the Village of New Hartford does hereby approve the sign that was presented by the New Hartford Central School.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

5. OTHER BUSINESS:

- A. 77 Genesee Street:** Trustee Alesia introduced the following Resolution for adoption and it was duly seconded by Trustee Grygiel:

RESOLUTION 2023-12

RESOLVED, that the Village of New Hartford does hereby approve removing one parking spot in front of 77 Genesee Street in order to aid the visibility of oncoming traffic from west Genesee.

The Village Board voted upon a roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye

Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

Mayor Ryan sent Dr. El Khoury's concerns regarding removing a parking spot to Mike Pimpanella from the NYSDOT. Mr. Pimpanella is going to handle this matter going forward.

- B. Hometown Hero:** Mayor Ryan advised the Board that 25 brackets have been ordered and are expected this week to hang the Hometown Heroes banners from the telephones poles around the Village. Only 21 banners have been ordered so there will be a few extra brackets in the event of any new orders.
- C. Little League Fence:** Mayor Ryan shared a letter received from Adnan Bubalo, 1 Bonnie Lane, stating that the Little League field fence was damaged and was in need of repair. At the time of the Board Meeting the fence had been repaired satisfactorily.
- D. Mr. Brad Bohling:** Mayor Ryan shared a bill received from Mr. Brad Bohling at 2 Gary Ave, and a letter from him lawyer regarding rebar that was removed from the edge of his property during paving. Per Superintendent Hughes, the rebar was returned to Mr. Bohling along with notice that rebar on property line is against Village code. Superintendent Hughes is going to provide Mr. Bohling with a rock to put on the corner of his property to prevent damage from drivers cutting the corner.
- E. El-Mar, 37 Campion Road:** Attorney DeTraglia advised that he requested a discovery on the property. Due to the voluminous nature of the request, El-Mar has requested additional time to complete.
- F. Insurance Package:** Trustee Alesia introduced the following Resolution for adoption and it was duly seconded by Trustee Grygiel:

RESOLUTION 2023-13

RESOLVED, that the Village of New Hartford does hereby approve the insurance package submitted by Gates-Cole for 2023-2024 in the amount of \$45,232.00.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye

Trustee Sherman Aye
Mayor Ryan Aye

The Resolution was unanimously carried and duly **ADOPTED**.

- G. Rev. Townsend, the minister at the New Hartford Presbyterian Church, has approached the Village to buy the park currently owned by the church. Mayor Ryan asked Treasurer Dreimiller to put some numbers together based on comparable lots/land for sale in the area. The church was OK with a payment plan to be paid over several years.
- H. Letters were sent out for the parking lot fees. There are a few businesses that are past due by several years. Attorney DeTraglia and Mayor Ryan are going to look into how to handle collecting the severely past due fees.
- I. Trustee Butler introduced the following Resolution for adoption and it was duly seconded by Trustee Sherman:

RESOLUTION 2023-14

RESOLVED, that the Village of New Hartford does hereby approve Don McHarris to serve on the Zoning Board of Appeals.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia Aye
Trustee Butler Aye
Trustee Grygiel Aye
Trustee Sherman Aye
Trustee Ryan Aye

The Resolution was unanimously carried and duly **ADOPTED**.

- J. **GOVERNMENTAL IMMUNITY FROM ZONING:** Trustee Alesia introduces the following Resolution for adoption and it was duly seconded by Trustee Grygiel:

RESOLUTION 2023-15

WHEREAS, the Village of New Hartford (the "Village") is the owner of the property located at 2 Mill Street and designated on the tax map as (329.019-5-2)(the "Property"); and

WHEREAS, the Village desires to use a portion of the Property for the installation of a wireless communications support structure; and

WHEREAS, Bell Atlantic Mobile Systems LLC DBA Verizon Wireless (“Verizon Wireless” or the “Applicant”) desires to install and operate a 150’ monopole (and associated equipment) on the Property, necessary to accommodate the wireless coverage needs of various Village Departments by closing significant gaps in reliable wireless service that exist in the vicinity of the Property within the Village and to provide additional network capacity relief to the existing Verizon Wireless network; and

WHEREAS, the Village and Verizon Wireless negotiated a Land Lease Agreement (“Agreement”) for the purpose of constructing a new personal wireless service facility, inclusive of a 150 foot tower on the Property; and

WHEREAS, the personal wireless service facility (“PWSF”) will be designed to accommodate antennas and equipment of other wireless communications carriers as well as the Village of New Hartford, including emergency services; and

WHEREAS, the Agreement between the Village and the Applicant is for Village Property not presently being utilized by the Village and is not anticipated to be needed by the Village over the term of the Agreement; and

WHEREAS, the Agreement is for fair market value and in the best interest of the Village and its residents; and

WHEREAS, the Village Board of Trustees has considered whether development of the PWSF may be afforded immunity from the Village’s zoning and development regulations pursuant to existing laws; and

WHEREAS, the proposed Agreement and communications facility have been discussed at certain Village Board of Trustees public meetings; and

WHEREAS, the Village Board of Trustees has carefully considered the “balancing of interests” test established by the New York State Court of Appeals in the 1988 case of *Matter of County of Monroe v City of Rochester*, 72 N.Y.2d 338; and

WHEREAS, for the reasons set forth below, and after careful and deliberate consideration of all information and comments provided with respect to this matter, including those comments from the Village’s attorney and engineer, the Village Board of Trustees has determined that the Applicant’s PWSF project shall not be subjected to the Village’s zoning regulations.

NOW THEREFORE BE IT:

RESOLVED, that the Village Board of Trustees makes the following findings in accordance with the County of Monroe balancing test:

Section 1. Findings:

The Village Board of Trustees had considered the nine (9) factors established by the Court of Appeals in *County of Monroe*, has balanced the public interests, and makes the following findings:

- a) *The nature and scope of the instrumentality seeking immunity* – The project involves installations of a new communications tower facility on Village-owned property that is currently used for public purposes including a Department of Public Works (“DPW”) building and the New Hartford Recreation center Ice Skating rink. The PWSF will be designed to accommodate the antennas and equipment of Verizon Wireless and all licensed carriers in the area, as well as the antennas of the Village of New Hartford, thereby reducing the unnecessary proliferation of additional towers. The Village of New Hartford is a political subdivision of the State of New York and is tax-funded and self-governing with elected officials. The Village provides emergency response for such things as fires, accidents, medical emergencies and natural disasters and so is a governmental entity that provides an essential public service. The Village is the owner of the Property, and pursuant to New York State Village Law Section 1-102(1), the Village has the power to lease the Property for such purposes as the Village may deem appropriate, which in this case includes a wireless facility which has been designed to support public safety communication antennas and equipment.
- b) *The encroaching government’s legislative grant of authority*-The Village of New Hartford Village Board of Trustees has the power and is the appropriate agency to consider the *County of Monroe* factors and make the determination that this application is exempt from its own zoning regulations. There is no other governmental entity with a potentially greater interest in the project because the property is owned by the Village and is wholly located within the boundaries of the Village.
- c) *The kind of function or land use involved* – The construction of the PWSF allows Verizon Wireless to remedy significant gaps in service and network capacity issues known to exist in the

surrounding area. The facility will also be designed to accommodate collocation opportunities from other service providers, as well as allow for collocation of Village-owned equipment to improve its local radio communications network. Overall, the proposed land use is not an intensive use and will not require municipal services as part of its general maintenance and operations. The facility will service the public interest, in that it will offer the general public a wireless communications alternative particularly well suited for responding to accidents and natural disasters and for reporting medical emergencies and other dangers such as potential criminal activity. The Village Board of Trustees notes that federally licensed wireless services such as those provided by Verizon Wireless have been deemed to be essential public services by both New York State and Federal Courts.

- d) *The effect local land use regulation would have upon the enterprise concerned*-Local regulations, if applied, would not be more protective of Village land use policies or the environment. The project has been carefully reviewed by the Village and its representatives and the layout of the proposed site has been properly planned with regard to the safety of vehicles and pedestrians, as well as those on neighboring properties and streets. Imposing local land use regulations on the proposed facility would have the effect of unreasonably delaying an essential public need for immediate and effective emergency response and reliable wireless communications. Moreover, the Village Board of Trustees has referred this matter to the Village Planning Board for its recommendation. The Village Planning Board, after careful consideration during its April 4, 2023 meeting, which was open to the public, and after stating the proposed cell service in the Village is definitely needed, the lack of which has been a big problem for residents and businesses, recommended approval of the 150' communications facility.
- e) Therefore, requiring the PWSF to be subject to formal zoning review, after the Planning Board has reviewed and recommended approval, would only serve to delay the installation and operation of the PWSF.
- f) *Alternative locations for the facility in less restrictive zoning areas* – The proposed facility is located on a relatively large Village owned parcel of land which is currently used as a DPW facility and recreation center. The proposed location is unique since is ideally

located to remedy a significant gap in wireless services for federally licensed carriers and emergency service entities, while causing a minimal intrusion on the community. The proposed communications facility is located immediately to the west of NYS Route 8. Although the Property is located in the R-1 zoning

- K. LEASE OF REAL PROPERTY (SEQRA):** Trustee Grygiel introduced the following Resolution for adoption and it was duly seconded by Trustee Alesia:

RESOLUTION 2023-16

**AUTHORIZING THE LEASE OF REAL PROPERTY LOCATED
AT 2 MILL STREET AND ISSUING A NEGATIVE DECLARATION
PURSUANT TO THE NEW YORK STATE ENVIRONMENTAL
QUALITY REVIEW ACT (“SEQRA”)**

WHEREAS, the Village was presented with an offer from Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless (“Verizon Wireless” or “Lessee”) to enter into a Land Lease Agreement for a portion of the real property located at 2 Mill Street in the Village of New Hartford, designated as APN Tax I.D. Number 329.019-5-2 (the “Property”), for the placement of equipment, building(s) and a tower for the purpose of constructing, establishing and maintaining a “cellular” transmission tower facility for Lessee’s use and that of its subtenants, licensees and customers; and

WHEREAS, the Village Board of Trustees has determined to lease the Property for adequate consideration of no less than fair market value without the services of a real estate broker; and

WHEREAS, the base rent for the Property shall be \$1,200.00 per month for an initial term of five (5) years; and

WHEREAS, the Village Board of Trustees believes that the lease of the real property is in the public interest of the residents of the Village, particularly since the end result will be more efficient cellular telephone communications within the Village; and

WHEREAS, the Village Board of Trustees preliminarily classifies this action as an unlisted action under SEQRA, and determines that it will act as the Lead Agency with respect to the environmental review of the proposed lease of the Property

in accordance with SEQRA and Part 617 of the regulations implementing SEQRA;
and

WHEREAS, the execution of the Land Lease Agreement for the Property is
subject to the issuance of a negative declaration pursuant to SEQRA; and

WHEREAS, the Village Board of Trustees has reviewed the Short Form
Environmental Assessment Form (“EAF”) prepared for this action;

NOW, THEREFORE, BE IT HEREBY

RESOLVED, that the Village Board of Trustees of the Village of New Hartford
hereby determines that the project is an unlisted action pursuant to Part 617 of
the regulations implementing SEQRA and that the Village Board of Trustees shall
act as Lead Agency for the required environmental review; and it is further

RESOLVED, that the Village Board of Trustees determines that the Land Lease
Agreement and the construction and operation of the communications tower
and related facilities will have no significant adverse impacts on the
environment, and hereby issues a negative declaration for the proposed Project
and authorizes the Mayor of the Village of New Hartford to execute Pages 3 and
4 of the EAF; and it is further

RESOLVED, that pursuant to the provisions of Section 1-102(1) of the Village Law
of the State of New York, the Village Board of Trustees does adopt this
Resolution agreeing to enter into a Land Lease Agreement for the Property for
not less than its fair market value.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

- L. **LAND LEASE:** Trustee Butler introduced the following Resolution for adoption and it was duly seconded by Trustee Sherman:

RESOLUTION 2023-17

RESOLVED, that the Village of New Hartford does hereby approve the land lease agreement made between the Village and Bell Atlantic Mobile Systems dba Verizon Wireless which is outlined below:

LAND LEASE AGREEMENT

This Land Lease Agreement (the "Agreement") is made by and between the Village of New Hartford, with its principal offices located at 48 Genesee Street, New Hartford, New York 13413, ("LESSOR") and Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("LESSEE"). LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **GRANT.** LESSOR hereby grants to LESSEE the right to install, maintain, replace, add and operate communications equipment ("Use") upon a portion of that real property owned, leased or controlled by LESSOR located at 2 Mill Street, Village of New Hartford, Oneida County, New York, Tax Map No. 329.019-5-2 (the "Property"). The Property is legally described on Exhibit "/1!" attached hereto and made a part hereof. The "Premises" is approximately 4,875 square feet, and is shown in detail on Exhibit "B" attached hereto and made a part hereof. LESSEE may survey the Premises. Upon completion, the survey shall replace Exhibit "B" in its entirety.
2. **INITIAL TERM.** This Agreement shall be effective as of the date of execution by both Parties ("Effective Date"). The initial term of the Agreement shall be for 5 years beginning on the first day of the month after LESSEE begins installation of LESSEE's communications equipment on the Premises (the

"Commencement Date") and will be acknowledged by the Parties in writing, including electronic mail.

3. EXTENSIONS.

- a. The initial term of this Agreement shall automatically be extended for 4 additional 5-year terms unless LESSEE gives LESSOR written notice of its intent to terminate at least three (3) months prior to the end of the then current extension term. The initial term and any extension terms shall be collectively referred to herein as the "Term".
- b. The annual rental for each such five (5) year extension term shall be equal to one hundred ten percent (110%) of the annual rental payable with respect to the immediately preceding five (5) Year term.

4. RENTAL.

- a. Rental payments shall begin on the Commencement Date and be due at a total annual rental of \$14,400.00, to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR at 48 Genesee Street, New Hartford, New York 13413 or to such other person, firm, or place as LESSOR may, from time to time, designate in writing at least 30 days in advance of any rental payment due date by notice given in accordance with Paragraph 19 below. The annual rental during each such five (5) year extension term shall be equal to one hundred ten percent (110%) of the annual rental payable during the immediately preceding five (5) year term. The initial rental payment shall be delivered by LESSEE no later than 90 days after the Commencement Date. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.
- b. For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully

executed state and local withholding forms if required; (iii) LESSEE's payment direction form, and (iv) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

5. ACCESS/UTILITIES.

- a) LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation and maintenance of LESSEE's communications equipment over or along a 30-foot-wide right-of-way for ingress and egress and a separate 10-foot-wide right-of-way for utilities (collectively, the "Easement"), which shall be depicted on Exhibit "B". LESSEE may use the Easement for the installation, operation and maintenance of wires, cables, conduits and pipes for all necessary electrical, telephone, fiber and other similar support services as deemed necessary or appropriate by LESSEE for the operation of its communications equipment. In the event it is necessary, LESSOR agrees to grant LESSEE or the service provider the right to install such services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by LESSOR. In the event of any power interruption at the Premises, LESSEE shall be permitted to install, maintain and/or provide access to and use of a temporary power source to be located on the Property, including related equipment and appurtenances, such as conduits connecting the temporary power source to the Premises.

6. CONDITION OF PROPERTY.

- a) LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's Use and clean and free of debris. LESSOR represents and warrants to LESSEE that as of the Effective Date, the Property is (a) in compliance with all Laws; and (b) in compliance with all EH&S Laws (as defined in Paragraph 24).

7. IMPROVEMENTS.

- a) The communications equipment including, without limitation, the tower structure, antennas, conduits, fencing and other screening, and other improvements shall be at LESSEE's expense and Installation shall

be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add to or otherwise modify its communications equipment, tower structure, antennas, conduits, fencing and other screening, or other improvements or any portion thereof and the frequencies over which the communications equipment operates, at no additional cost to LESSEE, whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit. LESSEE shall only be required to obtain LESSOR consent for modifications that increase LESSEE's Premises. LESSOR shall respond in writing to any LESSEE consent request within 30 days of receipt or LESSOR's consent shall be deemed granted, provided that any material modifications to the Premises shall be memorialized by the Parties in writing. LESSOR is not entitled to a rent increase associated with any LESSEE modification unless it is increasing its Premises, in which case, any rent increase shall be proportionate to the additional ground space included in the Premises.

8. GOVERNMENT APPROVALS.

- a) LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities (collectively, the "Government Entities") as well as a satisfactory soil boring test, environmental studies, or any other due diligence LESSEE chooses that will permit LESSEE's Use. LESSOR shall cooperate with LESSEE in its effort to obtain and maintain any Government Approvals. Notwithstanding anything contained herein to the contrary, LESSOR hereby agrees to allow LESSEE to install any RF frequency signage and/or barricades as are necessary to ensure LESSEE's compliance with Laws.

9. TERMINATION.

- a) LESSEE may, unless otherwise stated, immediately terminate this Agreement upon written notice to LESSOR in the event that (i) any applications for such Government Approvals should be finally rejected; (ii) any Government Approval issued to LESSEE is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (iii) LESSEE determines that such Government Approvals may not be obtained in a timely manner; (iv) LESSEE determines any structural analysis is unsatisfactory; (v) LESSEE, in its sole discretion,

determines the Use of the Premises is obsolete or unnecessary; (vi) with 3 months prior notice to LESSOR, upon the annual anniversary of the Commencement Date; or (vii) at any time before the Commencement Date for any reason or no reason in LESSEE's sole discretion.

10. INDEMNIFICATION.

- a) Subject to Paragraph 11, each Party and/or any successor and/or assignees thereof, shall indemnify and hold harmless the other Party, and/or any successors and/or assignees thereof, against (i) all claims of liability or loss from bodily injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents, and (ii) reasonable attorney's fees, expense, and defense costs incurred by the indemnified Party. The indemnified Party will provide the Indemnifying Party with prompt, written notice of any claim that is subject to the indemnification obligations in this paragraph. The indemnified Party will cooperate appropriately with the indemnifying Party in connection with the indemnifying Party's defense of such claim. The indemnifying Party shall defend any indemnified Party, at the indemnified Party's request, against any claim with counsel reasonably satisfactory to the Indemnified Party. The indemnifying Party shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified Party. All indemnification obligations shall survive the termination or expiration of this Agreement.

11. INSURANCE. The Parties agree to maintain during the term of this Agreement the following insurance policies:

- a. Commercial general liability in the amount of \$2,000,000.00 per occurrence for bodily injury and property damage and \$4,000,000.00

in the annual aggregate. Each party shall be included as an additional insured as their interest may appear under this Agreement on the other party's insurance policy.

- b. "All-Risk" property insurance on a replacement cost basis insuring their respective property with no coinsurance requirement. Where legally permissible, each party agrees to waive subrogation against the other party and to ensure said waiver is recognized by the insurance policies insuring the property.

12. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 10 and 23, a violation of Paragraph 26, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, diminution in value of business, loss of technology, rights or services, loss of data, or interruption or loss of use of service, incidental, punitive, indirect, special, trebled, enhanced or consequential damages, even if advised of the possibility of such damages, whether such damages are claimed for breach of contract, tort (including negligence), strict liability or otherwise, unless applicable law forbids a waiver of such damages.

13. INTERFERENCE.

- a. LESSEE agrees that LESSEE will not cause Interference that is measurable in accordance with industry standards to LESSOR's equipment. LESSOR agrees that LESSOR and other occupants of the Property will not cause interference that is measurable in accordance with industry standards to the then existing communications equipment of LESSEE.
- b. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to LESSEE'S Network Management Center at (800) 264-6620 or to LESSOR at (315) 732-1147, the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured.
- c. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance,

14. REMOVAL AT END OF TERM. Within 90 days of the expiration or earlier termination of the Agreement, LESSEE shall remove LESSEE's Communications Equipment (except footings and foundations) and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that the communications equipment shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws.
15. RIGHT OF FIRST REFUSAL. If at any time after the Effective Date, LESSOR receives an offer or letter of intent from any person or entity that is in the business of owning, managing or operating communications facilities or is in the business of acquiring landlord interests in agreements relating to communications facilities, to purchase fee title, an easement, a lease, a license, or any other interest in the Property or any portion thereof or to acquire any interest in this Agreement, or an option for any of the foregoing, LESSOR shall provide written notice to LESSEE of said offer ("LESSOR'S Notice"), LESSOR'S Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, a description of the portion of an interest in the Property and/or this Agreement which will be conveyed in the proposed transaction, and a copy of any letters of intent or form agreements presented to LESSOR by the third party offerer. LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the terms and conditions of such offer or by effectuating a transaction with substantially equivalent financial terms. If LESSEE fails to provide written notice to LESSOR that LESSEE intends to meet such bona fide offer within 30 days after receipt of LESSOR'S Notice, LESSOR may proceed with the proposed transaction in accordance with the terms and conditions of such third party offer, in which event this Agreement shall continue in full force and effect and the right of first refusal described in this Paragraph shall survive any such conveyance to a third party. If LESSEE provides LESSOR with notice of LESSEE's intention to meet the third party offer within 60 days after receipt of LESSOR'S Notice, then if LESSOR'S Notice describes a transaction involving greater space than the Premises, LESSEE may elect to proceed with a transaction covering only the Premises and the purchase price shall be prorated on a square footage basis. Further, LESSOR acknowledges and agrees that if LESSEE exercises this right of first

refusal, LESSEE may require a reasonable period of time to conduct due diligence and effectuate the closing of a transaction on substantially equivalent financial terms of the third party offer. LESSEE may elect to amend this Agreement to effectuate the proposed financial terms of the third party offer rather than acquiring fee simple title or an easement interest in the Premises. For purposes of this Paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale for which LESSEE has any right of first refusal.

16. RIGHTS UPON SALE. Should LESSOR, at any time during the Term, decide (i) to sell or otherwise transfer all or any part of the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder. In the event that LESSOR completes any such sale, transfer, or grant described in this Paragraph without executing an assignment of the Agreement whereby the third party agrees in writing to assume all obligations of LESSOR under this Agreement, then LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Agreement.
17. LESSOR'S TITLE. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the Effective Date and covenants during the Term that LESSOR has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easements, restrictions or other impediments of title that will adversely affect LESSEE's Use.
18. ASSIGNMENT AND SUBLETTING BY LESSEE.
 - a. This Agreement may be sold, assigned or transferred by either party without any approval or consent of the other Party.

b. LESSEE may, in its sole discretion, sublet, license or otherwise allow the use of all or any part of the Premises without any prior approval or consent of the LESSOR, upon the payment of \$100.00 per month per additional tower user beyond LESSEE, payable by such sublessee, licensee or other user (hereinafter, a "user") directly to LESSOR.

(I) Notwithstanding any other provision of this Agreement: (1) no additional payment shall be due to LESSOR where such sublease, license or other use is required, ordered or negotiated as a condition of approval by or with any governmental authority having jurisdiction over LESSEE or the Premises, for governmental, emergency services or other public service use; and (2) LESSEE shall not be required to obtain approval from the LESSOR for such use.

(II) LESSEE shall have the sole right to determine whether it will sublet, license or otherwise allow the use of any portion of the Premises or whether it will sublet, license or enter into any other usage agreement with any specific user. LESSEE shall have no liability of any nature to LESSOR for failure to sublet, license or otherwise allow the user of all or any part of the Premises to any or all potential user(s).

(III) LESSEE shall not be responsible to LESSOR for the collection or payment of rents by any user to LESSOR hereunder, and shall have no liability to LESSOR in the event of failure of payment by any such user.

(IV) Any user agreement that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto. LESSEE shall have the right to require, in its sole discretion, that any such user(s) enter into a three- party agreement with LESSOR and LESSEE to confirm the direct payment obligation to LESSOR hereunder, document LESSOR's consent to said agreement and otherwise memorialize said user's agreement to all terms and conditions of this Agreement.

(V) It is understood and agreed by the Parties that the additional payment hereunder shall only apply if LESSEE is able to accommodate all of the third-party user's facilities within the Premises. If LESSEE is unable to accommodate any or part of said user's facilities within the Premises, then LESSOR may enter into an agreement with the user for a portion of the property that said user requires to locate its facilities. In this event, LESSEE shall receive 100% of the rental for that portion of the facilities that are located within the limits of the Premises and LESSOR shall receive 100% of the rental, negotiated by the LESSOR and said user,

for the portion of user's facilities that are located on the property outside LESSEE's Premises.

19. NOTICE. Except for notices permitted via telephone in accordance with Paragraph 13, or via electronic mail in accordance with Paragraph 2, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business day delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR; Village of New
Hartford 48 Genesee
Street
New Hartford, New York 13413

LESSEE: Bell Atlantic Mobile Systems LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

20. SUBORDINATION AND NON DISTURBANCE. Within 15 days of the Effective Date, LESSOR shall obtain a Non-Disturbance Agreement (as defined below) and any required consent from existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attainment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will honor all of the terms of the

Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (If any) and on all successors and assigns of Lender and/or Its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and set off against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

21. DEFAULT. It is a "Default" if (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice, or (ii) LESSOR fails to comply with this Agreement and the failure interferes with LESSEE's Use and LESSOR does not remedy the failure within 5 days after written notice from LESSEE or, if the failure cannot reasonably be remedied in such time, if LESSOR does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 21 do not extend the period of time in which either Party has to cure interference pursuant to Paragraph 13 of this Agreement.

22. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party, may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon receipt of an itemized invoice. If LESSEE undertakes any such performance on

LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an itemized invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under this Agreement until the full undisputed amount is fully reimbursed to LESSEE.

23. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of the Property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some of the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.
24. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs LESSEE's Use, rent shall abate until LESSEE'S Use is restored. If LESSEE's Use is not restored within 45 days, LESSEE may terminate this Agreement.
25. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs LESSEE's Use, LESSEE may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs and, specifically excluding loss of LESSEE's leasehold interest, any other damages LESSEE may incur as a result of any such condemnation.

26. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (i) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and (ii) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).
27. TAXES. If LESSOR is required by law to collect any federal, state, or local tax, fee, or other governmental imposition (each, a "Tax") from LESSEE with respect to the transactions contemplated by this Agreement, then LESSOR shall bill such Tax to LESSEE in the manner and for the amount required by law, LESSEE shall promptly authorities as required by law; provided, however, that LESSOR shall not bill to LESSOR with an exemption certificate or other reasonable basis for relieving LESSOR of its responsibility to collect such tax from LESSEE. Except as provided in this Paragraph 27, LESSOR shall bear the costs of all Taxes that are assessed against or are otherwise the legal responsibility of LESSOR with respect to itself, its property, and the transactions contemplated by this Agreement. LESSEE shall be responsible for all Taxes that are assessed against or are otherwise the legal responsibility of LESSEE with respect to itself, its property, and the transactions contemplated by this Agreement.
28. NON-DISCLOSURE. The Parties agree that this Agreement and any information exchanged between the Parties regarding the Agreement are confidential. The Parties agree not to provide copies of this Agreement or any other confidential information to any third party without the prior written consent of the other or as required by law. If a disclosure is required by law, prior to disclosure, the Party shall notify the other Party and cooperate to take lawful steps to resist, narrow, or eliminate the need for that disclosure.
29. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and

shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

30. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed, interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. LESSOR agrees to execute a Memorandum of this Agreement, which LESSEE may record with the appropriate recording officer. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. This Agreement may be executed in counterparts, including written and electronic forms. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

M. Site Access Agreement: Trustee Butler introduced the following Resolution for adoption and it was seconded by Trustee Sherman:

RESOLUTION 2023-18

RESOLVED, that the Village of New Hartford does hereby approve the Site Access Agreement provided by Bell Atlantic Mobile Systems LLC dba Verizon Wireless which is outlined below:

SITE ACCESS AGREEMENT

This Site Access Agreement (this "**Agreement**") is executed by **Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless** (the "**Licensee**"), with a business address of 180 Washington Valley Road, Bedminster, NJ 07921, and the **Village of New Hartford**, (the "**Licensor**") whose mailing address is 48 Genesee Street, New Hartford, New York 13413.

BACKGROUND

As part of Licensee's consideration of real property (the "**Property**") located at 2 Mill Street, Village of New Hartford, Oneida County, New York (Tax Map No. 329.019-5-2) for the placement, maintenance and use of a communications facility and appurtenant uses, the Licensor has agreed to grant to Licensee and other persons described herein, a license, to enter upon the Property to conduct activities to help Licensee assess the suitability of the Property for its intended use. These activities may include, among other things, environmental inspection, testing and sampling activities ("Site Investigations") at the Property. The purpose of this Agreement is to enter into a site access license governing the Site Investigations that may be conducted by Licensee's authorized agents, contractors, consultants and employees.

Licensee and Licensor agree as follows:

1. **Authority to Grant a License.** Licensor represents that it has the authority to grant the access allowed by this Agreement and that there is no need to obtain the approval or consent of any other party. The Licensor hereby grants a license to Licensee to conduct the Site

Investigation.

2. **Access to Property and Licensor's Consent.** Licensor grants to Licensee and its agents, advisors, employees, consultants, representatives, and independent contractors, including environmental contractors and consultants hired directly or indirectly by Licensee (collectively, the "**Licensee Representatives**"), the right, but not the obligation, of ingress to, egress from, and access under, above, and through, the Property for the purpose of performing the Site Investigation. The Site Investigation may include, but is not necessarily limited to, activities intended to (1) review environmental, safety and health conditions;(2) conduct radio tests, including the placing of radio broadcast/receive equipment on the Property for necessary periods; (3) conduct physical, structural and geotechnical testing; and (4) perform boundary and other surveys. These activities may, among other things, include the collection and testing of samples of soil, water, building materials and other substances. Without limiting the generality of the foregoing, the Licensee Representatives may drill into the soil, drill through pavement, remove reasonable amounts of soil, install and sample monitoring wells, and perform other tests, actions, evaluations, procedures, and treatments to complete its investigations. The Licensee Representatives shall undertake all activities on the Property in compliance with all applicable laws and shall use commercially reasonable efforts to minimize the extent and duration of any interference with Licensor's use and enjoyment and business operations on the Property. The cost of all such activities shall be the responsibility of Licensee (or the Licensee Representatives as arranged between the Licensee Representative and the Licensee) and not Licensor.

3. **Advance Notice.** Licensee or Licensee Representatives shall give Licensor at least twenty four (24) hours advance notice, either orally (by telephone or in person) or by electronic message of a planned activity that can reasonably be expected to require invasive activities into the Property's subsurface, including notice of the areas of the Property that are expected to be materially affected by any sampling, monitoring, installation, or similar action. Licensee Representatives shall cooperate with Licensor to schedule the activities so as to minimize the extent and duration of any interference with Licensor's use and enjoyment and/or business operations.

4. **Installation, Sampling, and Removal.** Licensor shall cooperate without incurring any expense, with the Licensee Representatives regarding all installation, monitoring, sampling, removal and related activities that Licensee Representatives desire to conduct on the Property. Licensor shall cooperate in locating buried utilities and improvements on the Property at the request of Licensee Representative and shall assist the Licensee Representatives in avoiding impacts to such buried or concealed features. At the Licensor's specific request, Licensee Representatives shall use commercially reasonable efforts to schedule its activities to avoid times of peak business activity on the Property. Licensor authorizes Licensee Representatives to obstruct temporarily, but for a reasonable period of time, access to, or use of, limited areas of the Property to conduct Site Investigations. Licensee Representatives may use any electrical or other utility outlets or connections on the Property to conduct its activities. Licensee Representatives shall split all samples with Licensor upon Licensor's request, so long as Licensor pays for any and all additional costs incurred by the Licensee Representatives in this regard. After completing the activities contemplated by this Agreement, Licensee or Licensee Representatives shall remove their equipment and restore any part of the Property that was affected by its activities to a condition that is reasonably similar to the condition of the Property at the time immediately preceding the commencement of said activities all at Licensees sole cost and expense.

5. **Indemnification.**

- a) Licensee shall indemnify and hold harmless Licensor for any penalties, damages or costs that result from the negligence or willful misconduct, misrepresentation or breach of warranty in this Agreement by Licensee or Licensee representatives.
- b) Licensor shall indemnify and hold harmless Licensee and Licensee Representatives for any penalties, damages or costs that result from the negligence or willful misconduct, misrepresentation or breach of warranty in this Agreement by Licensor including any damages or injuries to Licensee Representatives persons and/or property which arise from or relate to any existing hazardous waste, pollutant or hazardous substance presence or release associated with or related to the Property.
- c) The indemnification in this Agreement shall only apply if

prompt notice is provided to the indemnifying party. The indemnity is conditioned on the following: (i) the indemnifying party has the opportunity to fully manage any indemnified matter as it deems appropriate (including any required remediation or defense of claims) with employees, agents, contractors, consultants and attorneys of the indemnifying party's choosing and (ii) the reasonable cooperation of any indemnified party (including the signing of any properly completed forms that will allow for the continued current use of the property).

- d) The site access granted to the Licensee and/or Licensee Representatives pursuant to this Agreement extends to any repair or restoration work required to remediate any damage to the Property that is indemnified pursuant to this Section.
- e) Each licensee representative shall maintain commercial general liability insurance with limits of \$1,000,000.00 (*one million dollars*) including the Village of New Hartford, NY as an additional insured as their interest may appear under this Agreement; as well as workers compensation insurance in compliance with the statutory requirements of the state(s) of operation covering its employees.

6. Test Results

- a) Licensor understands and acknowledges that the environmental testing to be undertaken may create legal duties applicable to Licensor if conditions of pollution are discovered and that except to the extent required by law, neither Licensee nor Licensee Representatives have an obligation to report any test results or conditions to any party as a result of this Agreement. Licensee and Licensee Representatives will provide copies of test results to Licensor unless Licensor specifically requests, in writing, prior to the start of testing, not to receive the test results from Licensee's review. Licensor acknowledges that these tests are performed for Licensee's specific purposes and cannot be relied on by Licensor in any way as being accurate or sufficient for any purposes. Licensor agrees and acknowledges that it is not authorized to share, provide, disseminate, present, and/or make available the test results to any third party unless required by law.
- b) In certain cases test results regarding the environmental

conditions of the property may result in a reporting obligation specific to Licensee or Licensee Representatives. In any of those cases, Licensee or Licensee Representative shall, if reasonably possible, notify Licensor at least twenty four (24) hours prior to making the notification but in any case within seventy two (72) hours after making the notification to the appropriate agency. Licensor agrees that Licensee and Licensee Representatives bear no responsibility for the costs resulting from that repairing and that Licensee shall not become responsible for any conditions that it discovers during the Site Investigation.

- c) Licensor acknowledges and agrees that any samples that are taken during the activities undertaken pursuant to this Agreement and any investigation-derived media (i.e., drill cuttings, well purge water) generated by the investigation may require off-site disposal based upon test results. Licensor agrees to execute all properly completed waste manifests or other documents required for proper disposal of test results. Licensor's obligation to sign any properly completed waste manifests or other documents required for proper disposal survives this Agreement so long as those items that require disposal were generated pursuant to this Agreement. The cost of off-site disposal of media will be paid for by Licensee or the appropriate Licensee Representative, not Licensor.
- d) Licensee may use the results of the Site Investigation as it deems appropriate and may share the results with third parties, including, but not necessarily limited to attorneys, consultants, contractors, employees and regulators.

7. **Termination** Agreement shall terminate automatically on the earlier of: (1) execution of a lease agreement for any part of the Property between Licensee and Licensor, (2) a decision by Licensee that the site is unsuitable, or (3) April 20, 2023.

8. **Waiver; Modification; Severability.** An extension, amendment, modification, cancellation, or termination of this Agreement will be valid and effective only if it is in writing and signed by each party to this Agreement, except as provided otherwise in this Agreement. In addition, a waiver of any duty, obligation, or responsibility of a party under this Agreement will be valid and effective only if it is evidenced by a writing signed by, or on behalf of, the party against whom the

waiver or discharge is sought to be enforced. Whenever possible, each provision of this Agreement should be construed and interpreted so that it is valid and enforceable under applicable law. However, if a provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed severable from the remaining provisions of this Agreement and will not affect the validity, interpretation or effect of the other provisions of this Agreement or the application of that provision to other circumstances in which it is valid and enforceable.

9. Assignment; Third Party Beneficiaries. Neither the entry of this Agreement or any action taken by Licensee hereunder shall create any third-party beneficiary or third party beneficiary rights.

10. Legal Matters. The validity, construction, enforcement, and interpretation of this Agreement are governed by the laws of the State where the Property is located and the federal laws of the United States of America.

11. Notices. Except for oral notices specifically authorized in this agreement, notices permitted by this Agreement will be valid only if such notice is in writing, delivered personally or by e-mail, telecopy, commercial courier, or first class, postage prepaid, United States mail (whether or not certified or registered and regardless of whether a return receipt is requested or received by the sender), and addressed by the sender to the intended recipient at its address set forth in the first paragraph of this Agreement, or to such other address as the intended recipient may designate by notice given to the sender in accordance with this section. A validly given notice, consent, demand, request, or approval will be effective on the earlier of its receipt, if delivered personally or by e-mail, telecopy, or commercial courier, or the third day after it is postmarked by the United States Postal Service, if delivered by first class, postage prepaid, United States mail. Each party promptly shall notify the other of any change in its mailing address or telephone contact number stated in this Agreement.

12. Complete Agreement; Survival. This Agreement records the entire understanding between the parties regarding the subjects addressed in it and supersedes any previous or contemporaneous agreement, understanding, or representation, oral or written, by either of them.

13. Execution and Effectiveness. The parties may execute this Agreement in counterparts. Each executed counterpart will constitute an original document, and all executed counterparts, together, will constitute the same agreement. This Agreement will become effective upon the last signatory's delivery of the fully executed document to the other party, and the last signatory shall fill in the EXECUTED date below prior to such delivery.

The Village Board voted upon roll call, resulting in the following:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

- N.** Attorney DeTraglia stated the original deed for the Hoffman **Road** park was obtained and sent to the Village office for record keeping. Attorney DeTraglia suggested the park be added to the Village's insurance policy to which Mayor Ryan stated it had already been added.
- O. SUNSET WOOD REFINANCING:** Trustee Sherman introduced the following Resolution for adoption and it was duly seconded by Trustee Grygiel:

RESOLUTION 2023-19

RESOLVED, the Village of New Hartford does hereby approve the amendment to the Municipal Services Agreement proposed by Sunset Wood due to their refinancing.

The Village Board voted upon roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

6. **ADJOURNMENT:** Trustee Butler introduced the following Resolution for adoption and it was duly seconded by Trustee Alesia:

RESOLUTION 2023-20

RESOLVED, that the Village of New Hartford does hereby approve the adjournment of the Regular Board meeting at 8:07 pm.

The Village Board voted upon a roll call, resulting as follows:

Trustee Alesia	Aye
Trustee Butler	Aye
Trustee Grygiel	Aye
Trustee Sherman	Aye
Mayor Ryan	Aye

The Resolution was unanimously carried and duly **ADOPTED**.

Respectfully submitted,

Sarah Dobson
Village Clerk