

**HENRIETTA TOWN BOARD  
AGENDA  
SEPTEMBER 6, 2017  
7:00 P.M.**

Supervisor Moore  
Councilwoman Zinck  
Councilman Page  
Councilman Breese  
Councilman Adair

ORDER OF BUSINESS

1. Roll Call
2. Prayer
3. Pledge of Allegiance to the Flag
4. Public Presentation/Agenda Items
5. Approval of Minutes of the Preceding Meeting(s):

August 16, 2017

On Motion of: Councilman Page

Seconded by: Councilman Breese

6. Miscellaneous Communications
7. Introduction of and Action Upon Local Laws, Ordinances, Resolutions
8. Reports of Standing Committees and Actions Thereon
9. Reports of Special Committees
10. Public Comment
11. Adjournment

RESOLUTION #15-164/2017

Authorize Accounts Payable

RESOLUTION #15-165/2017

Authorize Tax Certiorari Settlement – Locust Hill County Club, Inc. – 2000 Jefferson Road

RESOLUTION #15-166/2017

Accept Howlett Acres Subdivision, Section 1 Letter of Credit

RESOLUTION #15-167/2017

Authorize Professional Engineering Services – Geothermal Test Well Services for the Proposed Henrietta Public Library Project – Nothnagle Drilling, Inc.

RESOLUTION #15-168/2017

Authorize Supervisor to Sign Out-of-District Sewer Use Contract – 138 Valley View Drive

RESOLUTION #15-169/2017

Authorize Purchase of Equipment – Drainage Department – 40FMR 40" Flail Mower Attachment

RESOLUTION #15-170/2017

Place Delinquent Sewer Bills on 2018 Combined Town and County Tax Rolls

RESOLUTION #15-171/2017

Authorize Supervisor to Sign Heartland Merchant Processing Agreement

RESOLUTION #15-172/2017

Approve and Adopt Standard Work Day and Reporting Resolution for Elected and Appointed Officials

RESOLUTION #15-173/2017

Support Construction of New Town Library, Including Acquiring Land and Setting Date for Public Information Meeting

RESOLUTION #15-174/2017

Approve Bond Financing for Town Library, Subject to Voter Approval

RESOLUTION #15-175/2017

Authorize Personnel Items

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-164/2017

On Motion of  
Councilwoman Zinck

Seconded by  
Councilman Adair

BE IT RESOLVED, that the Director of Finance be authorized to pay the following bills payable:

Exhibit A	Bills Payable dated 09/06/2017	\$ 340,166.69
Exhibit B	Manual Bills Payable dated 08/28/2017	\$ 79,640.57

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried

# **Accounts Payable**

## **Backup Info**

Available for review in the Town Clerk's  
Office Monday through Friday from  
9:00 a.m. – 5:00 p.m.

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-165/2017

On Motion of  
Councilman Adair

Seconded by  
Councilman Breese

WHEREAS, Locust Hill Country Club, Inc., heretofore commenced proceedings against the Assessor, the Board of Assessment Review, and other respondents for a review of the assessments for the years 2015 through 2017 for premises located at 2000 Jefferson Road in the Town of Henrietta, being identified as Tax Account Numbers 163.06-1-29, 163.10-1-2, and 163.14-1-3, and

WHEREAS, negotiations have been had between the Attorney for the Town and the Attorneys for the Petitioner in an attempt to settle and compromise Petitioner's claim, and

WHEREAS, after such negotiations, a tentative agreement has been reached between all parties on the terms of a proposed settlement subject to the approval of the Town Board and the approval of the Supreme Court of the State of New York, which terms of settlement are set forth in the stipulations on file in the Office of the Town Assessor, and

WHEREAS, upon due consideration of all facts and circumstances, the Town Board finds that the proposed compromise and settlement is fair and reasonable and should be approved.

THEREFORE, BE IT RESOLVED, that the proposed settlement of the Tax Certiorari proceedings brought by Locust Hill County Club, Inc. for the years 2015 through 2017 be and hereby is approved.

BE IT FURTHER RESOLVED, that the Attorney representing the Town be and hereby is directed to make an application to the Supreme Court of the State of New York for approval of such settlement and that upon obtaining such approval, the Assessor of the Town of Henrietta be and hereby is directed to make the necessary adjustments in the Assessment Rolls for the Town of Henrietta to reflect the terms of such settlement.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried

Town Tax Refund Calculations - Locust Hill Country Club

Assessmnt	Roll	Actual	Actual	Petitioned	Revised	Revised	Reduction	Tax Rate	Refund
Year	Effective	Assessmnt	Taxable	Assessmnt	Assessmnt	Taxable			
2015	January-16	3,930,800	3,930,800	393,080	3,930,800	3,930,800	0	1.12	0
2016	January-17	3,930,800	3,930,800	393,080	3,300,000	3,300,000	630,800	1.12	707
								<b>TOTAL:</b>	<b>707</b>
2000 Jefferson Road (only)									
SBL #163.06-1-29 (only)									
Settlement for 163.10-1-2, 163.14-1-3 resulted in no reduction for these parcels.									
<i>Refund calculations are estimates only.</i>									
<i>Actual refunds calculated at each jurisdictional level and may be more precise.</i>									
Prepared: 8/31/2017									
						<b>TOTALS:</b>			
							Town:	707	
							County:	5,343	
							School:	<u>12,414</u>	
								18,464	
							S/D:	<u>1,804</u>	
								<b>\$20,268</b>	

County Tax Refund Calculations - Locust Hill Country Club								
Assessmnt		Actual	Actual	Revised	Revised			
Roll		Taxable	Taxable	Taxable	Taxable			
Year	Effective	Assessmnt	Assessmnt	Assessmnt	Assessmnt	Reduction	Tax Rate	Refund
2015	January-16	3,930,800	3,930,800	3,930,800	3,930,800	0	8.45	0
2016	January-17	3,930,800	3,930,800	3,300,000	3,300,000	630,800	8.47	5,343
<b>TOTAL:</b>								<b>5,343</b>

School Tax Refund Calculations - Locust Hill Country Club								
Assessmnt		Actual	Actual	Revised	Revised			
Roll		Taxable	Taxable	Taxable	Taxable			
Year	Effective	Assessmnt	Assessmnt	Assessmnt	Assessmnt	Reduction	Tax Rate	Refund
2015	September-15	3,930,800	3,930,800	3,930,800	3,930,800	0	19.74	0
2016	September-16	3,930,800	3,930,800	3,300,000	3,300,000	630,800	19.68	12,414
<b>TOTAL:</b>								<b>12,414</b>

Special District Refund Calculations - Locust Hill Country Club								
Assessmnt		Actual	Actual	Revised	Revised			
Roll		Taxable	Taxable	Taxable	Taxable			
Year	Effective	Assessmnt	Assessmnt	Assessmnt	Assessmnt	Reduction	Tax Rate	Refund
2015	January 16	3,930,800	3,930,800	3,930,800	3,930,800	0	2.86	0
2016	January 17	3,930,800	3,930,800	3,300,000	3,300,000	630,800	2.86	1,804
<b>TOTAL:</b>								<b>1,804</b>
Rate Structure:		Roll	Fire	Ambulance	Lighting	Total		
Year								
2010			2.20	0.21	0.18			2.59
2011			2.30	0.21	0.18			2.69
2012			2.33	0.21	0.18			2.72
2013			2.39	0.21	0.18			2.78
2014			2.40	0.21	0.18			2.79
2015			2.65	0.21	0.18			3.04
2016			2.65	0.21	0.18			3.04
<i>Note: Subject property is in Fire and Ambulance districts only.</i>								

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RESOLUTION #15-166/2017

On Motion of  
Councilman Breese

Seconded by  
Councilman Page

WHEREAS, HG&H Land Company, Inc., the Developer of Howlett Acres Subdivision, Section 1 (located southeast of Erie Station Road and East River Road) has submitted an Engineer's Estimate for construction of all site improvements for said subdivision section, and

WHEREAS, the Director of Engineering and Planning has reviewed the estimate prepared by BME Associates and has found it acceptable in amount and form, and

WHEREAS, the Town Board wishes to ensure proper and complete installation of all site improvements required by the Town.

THEREFORE, BE IT RESOLVED, that the Developer, HG&H Land Company, Inc., submit a Letter of Credit in favor of the Town in the amount of \$1,684,957.00.

BE IT FURTHER RESOLVED, that the Letter of Credit be in a form acceptable to the Town Attorney.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried





39 Cascade Drive / Rochester, NY 14614 / Phone (585) 458-7770

**Engineers Estimate for Letter of Credit**

**Project: Howlett Acres Subdivision - Section 1**

**Prepared For: Bruce Howlett - Howlett Farms**

**1112 East River Road**

**Avon, NY 14414**

**Date: July 14, 2017 - REVISED 8/18/17**

This Engineers estimate represents the probable construction costs in 2017 dollars to complete the site improvements for Section 1, as shown on the plans entitled "Howlett Acres Subdivision - Section 1 " last revised 6/23/2017.

**Summary of Costs**

Section No.	Section Description	Amount (\$)
1	EROSION CONTROL	\$ 44,045
2	EARTHWORK	\$ 200,924
3	WATER MAIN SYSTEM	\$ 100,849
4	STORM WATER MANAGEMENT FACILITY	\$ 141,674
5	STORM DRAINAGE SYSTEM	\$ 168,130
6	SANITARY SEWER SYSTEM	\$ 407,922
7	ROADWAY SYSTEM	\$ 319,771
8	LANDSCAPING	\$ 52,691
9	MISCELLANEOUS	\$ 33,550
<b>Totals</b>		
	<b>SUB-TOTAL</b>	<b>\$ 1,469,556</b>
	<b>10% Contingency (Sections 1-8)</b>	<b>\$ 143,601</b>
	<b>5% Inspection Fees (Sections 1-8)</b>	<b>\$ 71,800</b>
	<b>OVERALL TOTAL</b>	<b>\$ 1,684,957</b>

**SECTION 1: EROSION CONTROL**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
1.1	Construction entrance	1	EA	2,000.00	2,000
1.2	Truck Wash	1	EA	500.00	500
1.3	Concrete Washout	1	EA	500.00	500
1.4	Construction staging and parking area	1	LS	2,500.00	2,500
1.5	Silt Fence	4,690	LF	3.00	14,070
1.6	Orange Construction Fence	1,550	LF	2.00	3,100
1.7	Stone Check Dam	7	EA	250.00	1,750
1.8	Stone Level Spreader	1	EA	1,000.00	1,000
1.9	Silt Sock Inlet Protection	12	EA	175.00	2,100
1.10	Filter Fabric Inlet Protection	3	EA	175.00	525
1.11	Temporary diversion Swale	3,000	EA	2.00	6,000
1.12	Temporary sediment basins (pond areas) includes maintenance & restoration upon completion	4	EA	2,500.00	10,000

**TOTAL EROSION CONTROL \$ 44,045**

**SECTION 2: EARTHWORK**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
2.1	Clearing and Grubbing	-	AC	-	-
2.2	Strip and Stockpile Topsoil	27,768	CY	1.75	48,594
2.3	Earthwork pay quantity based on unclassified excavation	50,400	CY	2.00	100,800
2.4	Topsoil redistribution	10,015	CY	2.00	20,030
2.5	Temporary seeding	14	AC	1,000.00	14,000
2.6	Permanent seeding (10' beyond R.O.W. & Open Space)	11	AC	1,500.00	16,500
2.7	Compaction testing in R.O.W.	1	LS	1,000.00	1,000

**TOTAL EARTHWORK \$ 200,924**

**SECTION 3: WATER MAIN SYSTEM**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
3.1	Connect to existing watermain (12"x8" tapping sleeve & valve)	1	LS	4,000.00	4,000
3.2	Temporary Sampling/Disinfection Tap	4	EA	400.00	1,600
3.3	8" ductile iron CL 51 watermain including trenching, bedding, backfilling, bends and warning tape	1,612	LF	31.00	49,972
3.4	8" Gate valve and box	4	EA	1,250.00	5,000
3.5	Hydrant with guard valve and box	3	EA	3,350.00	10,050
3.6	1" copper water service (from tap to Curb Stop)	33	EA	325.00	10,725
3.7	1" plastic water service (from curb stop to 2' beyond outermost easement)	33	LF	130.00	4,290
3.8	Curb stop and box	34	EA	400.00	13,600
3.9	Testing	1	LS	1,612.00	1,612

**TOTAL WATER MAIN SYSTEM \$ 100,849**

**SECTION 4: STORM WATER MANAGEMENT FACILITY**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
4.1	SWMF Earthwork	9,000	CY	2.00	18,000
4.2	3' Square concrete pad for outlet structure including subbase & pin to wier wall	1	LS	500.00	500
4.3	Weir wall/outlet control structure complete	1	LS	15,000.00	15,000
4.4	Trash Rack	1	EA	250.00	250
4.5	Grout stone fill on the outlet side of weir wall	23	CY	200.00	4,600
4.6	Medium Stone fill (including fabric)	110	CY	75.00	8,250
4.7	Pond Access Trail - 9" Crusher Run #2 (14,607SF)	406	CY	30.00	12,180
4.8	Pond Access Trail - Geotextile fabric (14,607SF)	3,579	SY	1.25	4,474
4.7	Pond Access Trail - 4" Compacted Crusher Run with dust at entrance only (1,113SF)	14	CY	30.00	420
4.9	Bioretention includes excavation, 12" of Stone fill, soil media, geotextile & underdrain.	12,500	SF	6.00	75,000
4.10	Permanent Seeding (SWMF and Bioretention)	2	AC	1,500.00	3,000

**TOTAL STORM WATER MANAGEMENT FACILITY \$ 141,674**

**SECTION 5: STORM DRAINAGE SYSTEM**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
5.1	12" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	618	LF	21.00	12,978
5.2	15" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	481	LF	25.00	12,025
5.3	18" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	660	LF	30.00	19,800
5.4	24" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	435	LF	32.00	13,920
5.5	30" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	344	LF	40.00	13,760
5.6	36" smooth interior HDPE storm pipe including excavation, bedding, and backfilling (complete)	158	LF	50.00	7,900
5.7	2' SQ Inlet	1	EA	1,800.00	1,800
5.8	2.5' SQ Inlet	1	EA	2,000.00	2,000
5.9	3' SQ Inlet	1	EA	2,500.00	2,500
5.10	30" End Section (metal not plastic)	1	EA	375.00	375
5.11	36" End Section (metal not plastic)	5	EA	400.00	2,000
5.12	4' Diameter manhole, complete	3	EA	2,250.00	6,750
5.13	5' Diameter manhole, complete	4	EA	3,400.00	13,600
5.14	6' Diameter manhole, complete	1	EA	4,700.00	4,700
5.15	6' Diameter inlet manhole, complete	1	EA	4,700.00	4,700
5.16	8' Diameter manhole, complete	1	EA	6,000.00	6,000
5.17	6" PVC Storm Lateral (SDR-35) to 2' outside outermost easement including cleanout, complete	41	EA	905.00	37,105
5.18	Light Stone fill (including fabric)	15	CY	55.00	825
5.19	Video Tape Storm Sewer	2,696	LF	2.00	5,392

**TOTAL STORM DRAINAGE SYSTEM \$ 168,130**

**SECTION 6: SANITARY SEWER SYSTEM**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
6.1	Connect to existing manhole	1	EA	900.00	900
6.2	Pump Station with backup Generator, complete	1	LS	170,000.00	170,000
6.3	6" HDPE forcemain	186	LF	20.00	3,720
6.4	Directional drill under highway	1	LS	20,000.00	20,000
6.5	Directional drill under stream	1	LS	20,000.00	20,000
6.6	8" PVC main SDR -35, including bedding, backfill complete	3,893	LF	21.00	81,753
6.7	4" PVC Lateral to 2' outside outermost easement w/ cleanouts, complete	39	EA	1,130.00	44,070
6.8	4' Diameter manhole, complete	13	EA	3,000.00	39,000
6.9	5' Diameter manhole, complete	4	EA	4,200.00	16,800
6.10	Video Tape Sanitary Sewer	3,893	LF	2.00	7,786
6.11	Sanitary Sewer Testing, Other	1	LS	3,893.00	3,893

**TOTAL SANITARY SEWER SYSTEM** \$407,922

**SECTION 7: ROADWAY SYSTEM**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
7.1	Connect to county road (sawcutting, pavement and gutter removal)	1	EA	400.00	400
7.2	Roadboxout includes excavation, shaping, and proof rolling (43,755 SF)	1,621	CY	3.50	5,674
7.3	Geotextile Fabric (43,755 SF)	6,986	SY	1.25	8,733
7.4	Weeps, complete including 4" underdrain tied into catch basins	2,979	LF	10.00	29,790
7.5	11" Crusher Run Stone - Type 2 Item 304.12 - Material Designation 703-0201-2 (43,755 SF)	1,486	CY	35.00	52,010
7.6	1" Crusher Run Stone - Type 2 Max. 5/8 Item 304.12 - Material Designation 703-0201-2 (34,719 SF)	107	CY	35.00	3,745
7.7	3" Asphaltic Concrete Binder - Type 3 Item 403.138902 (34,719 SF)	3,857	SY	12.00	46,284
7.8	1" Asphaltic Concrete Top - Type 7F Item 403.198202 (34,719 SF)	3,857	SY	8.00	30,856
7.9	24" x 24" drain inlet structure	11	EA	1,800.00	19,800
7.10	30" Wide concrete gutters includes subbase, and placement (concrete gutters do not meet ADA maximum slopes. Modified gutter sections do not meet specific ADA maximum slopes.	2,979	LF	10.75	32,024
7.11	Planters Row Temp. Turnaround Hammerhead - 2" Asphaltic Concrete Binder - Type 3 Item 403.138902 (4,800 SF)	533	SY	10.00	5,333
7.12	Planters Row Temp. Turnaround Hammerhead - 9" Crusher Run Stone - Type 2 Item 304.12 (4,800 SF)	133	CY	35.00	4,666
7.13	Concrete sidewalks including excavation, subbase, and placement (complete)	7,631	SF	7.00	53,417
7.14	Paved Driveway Aprons	32	EA	845.00	27,040

**TOTAL ROADWAY SYSTEM** \$ 319,771

**SECTION 8: LANDSCAPING**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
8.1	Brandywine Maple	13	EA	250.00	3,250
8.2	Burgundy Belle Red Maple	9	EA	250.00	2,250
8.3	River Birch	4	EA	200.00	800
8.4	Skyline Honey Locust	7	EA	200.00	1,400
8.5	Prairie Fire Crabapple	9	EA	250.00	2,250
8.6	Norway Spruce	18	EA	250.00	4,500
8.7	White Spruce	22	EA	250.00	5,500
8.8	Colorado Spruce	18	EA	250.00	4,500
8.9	Cleveland Select Pear	11	EA	200.00	2,200
8.10	Northern Red Oak	2	EA	200.00	400
8.11	Vernal Witchhazel	52	EA	75.00	3,900
8.12	Winter Red Winterberry	28	EA	75.00	2,100
8.13	Switchgrass	104	EA	5.00	520
8.14	Pedestrian Trail - 6" Wood Chips (14,193 SF)	263	CY	50.00	13,150
8.15	Pedestrian Trail - Geotextile fabric	1,577	SY	1.25	1,971
8.16	Landscape Contingency for buffer areas	1	LS	4,000.00	4,000

**TOTAL LANDSCAPING \$ 52,691**

**SECTION 9: MISCELLANEOUS**

Item No.	Item Description	Quantity	Unit	Unit Price (\$)	Amount (\$)
9.1	Open space & conservation easement/wetland sign	16	EA	300.00	4,800
9.2	Temporary street signs, temp access signs	2	EA	300.00	600
9.3	Sanitary MH Signs	5	EA	300.00	1,500
9.4	R.O.W. Monuments including record map	8	EA	500.00	4,000
9.5	Open space property stakes	7	EA	350.00	2,450
9.6	Utility Record Mapping (SWMF, Storm, Sanitary)	1	LS	5,000.00	5,000
9.7	Instrument Survey Maps (including lateral locations)	32	EA	150.00	4,800
9.8	Erosion Control Observations, SPEDES Permit (4 hrs/wk site visit & reports, 1 hr/wk oversight & cert's), 12 Months	52	WK	200.00	10,400

**TOTAL MISCELLANEOUS \$ 33,550**

**GRAND TOTAL \$ 1,469,556**

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-167/2017

On Motion of  
Councilman Page

Seconded by  
Councilwoman Zinck

WHEREAS, the 2017 Engineering Budget provides funds for obtaining professional engineering services for Professional Architecture and Engineering Services, and

WHEREAS, the Town of Henrietta has requested a proposal from Nothnagle Drilling, Inc. to provide a Geothermal Test Well for the proposed Henrietta Public Library Project, and

WHEREAS, the Director of Engineering & Planning has carefully examined the proposal submitted by Nothnagle Drilling, Inc. for fairness and equitability for the scope of work to be performed and recommends acceptance of the proposal received from Nothnagle Drilling, Inc. for performing a Geothermal Test Well for the new Henrietta Public Library Project.

THEREFORE, BE IT RESOLVED, that Nothnagle Drilling, Inc., 1821 Scottsville-Mumford Road, Scottsville, New York 14546 be hereby authorized to provide a Geothermal Test Well for the new Henrietta Public Library Project, for a total amount not to exceed \$9,500.00.

BE IT FURTHER RESOLVED, that the Director of Finance be authorized to pay said consultant upon successful completion of the Project, and acceptance by the Director of Engineering & Planning.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried

# NOTHNAGLE DRILLING, INC.

1821 Scottsville-Mumford Road

Scottsville, New York 14546

(585) 538-2328

FAX(585) 538-2357

June 15, 2017

Town of Henrietta  
P.O. Box 999  
475 Calkins Road  
Henrietta, NY 14467

RE: Geothermal Test Well  
New Library  
Calkins Road  
Henrietta, NY

ATTN: Mr. Craig Eckert

Dear Craig:

Below please find applicable unit costs to perform drilling services at the above referenced location.

We propose to drill and install a 1 1/4" SDR 11 HDPE, geothermal test well to a maximum depth of 400 feet below ground surface for the following costs.

1. Drill and Install Test Well to Maximum Depth of 400' BGS:	Lump Sum:	\$6,000.00
2. Conductivity Test with report.	Lump Sum:	<u>\$3,500.00</u>
	Total Estimated Cost:	\$9,500.00

We assume the drill site is accessible to our truck mounted drill equipment. No containment of drill effluents are anticipated. Cuttings shall be staged on site. NYS prevailing wage rates were used to determine these costs.

Anomalies in underground conditions; to include, gas zones, salt water zones, major voids in rock section of geology, may require shortening of the well. Additional costs associated with these conditions could occur and would be approved by customer before proceeding.

We appreciate the opportunity to submit this proposal.

Sincerely,

Zachary R. Nothnagle  
Project Manager

ACCEPTED  


AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-168/2017

On Motion of  
Councilwoman Zinck

Seconded by  
Councilman Adair

WHEREAS, Roberta Pallifrone, whose address is 138 Valley View Drive, being identified as Tax Identification No. 174.01-2-43, wish to connect to an existing sanitary sewer main, and

WHEREAS, the Town of Henrietta has offered to enter into an Out-of-District Sewer Use Contract with Roberta Pallifrone, and

WHEREAS, the Town Attorney has examined this Agreement and has found it to be in good order.

THEREFORE, BE IT RESOLVED, that the Supervisor be hereby authorized to execute and deliver said Agreement by and between the Town of Henrietta and Roberta Pallifrone.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried



**TOWN OF HENRIETTA  
OUT OF DISTRICT  
SEWER USE AGREEMENT**

Phone (585) 359-7035  
Fax (585) 359-9667

**This Agreement** made, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the Town Board of Henrietta as Sewer Commissioners for Henrietta Sewer District No. 1, herein called the Sewer District, and Roberta Pallifrone herein called the user, as follows:

**Whereas**, the user is the owner of real property lying outside the territorial limits of Sewer District and outside of any extension thereof, and said user wishes to use the facilities of said Sewer District for the purpose of furnishing sanitary sewage facilities for the real property located on 138 Valley View Drive  
Tax Account No. 174.01-2-43 \_\_\_\_\_ being the lands described in a deed recorded in Monroe County Clerk's Office in Liber 5451 of Deeds, page 200, and

**Whereas**, the facilities of said Sewer District are adequate to permit such use,

It is agreed as follows:

1. The District consents that the users may connect their sanitary sewer facilities to the existing street on York Bay Trail in front/rear of the above described premises.
2. The users shall make said connection at their own cost under the supervision and direction of an authorized representative of the Sewer District and shall install the same in such manner and under such conditions as are directed by such representative.
3. As a fee for the right to make such connection, the users shall pay to the Sewer District all applicable Permit Fees and shall further pay for the use of said sewer rental charges as are paid by users residing within the Sewer District.
4. The users hereby agree that in the event any petition is hereafter circulated for the extension to Henrietta Sewer District No. 1, so as to include the real property of the users, that the users will sign such petition and consent to the creation of such extension.
5. In addition to the foregoing quarterly rental charges, the user shall pay to the Sewer District an annual fee equal to the amount for which the user's property would be assessed for debt service and/or maintenance, if the user's property were within the boundaries of Extension No. 139 to the Henrietta Sewer District No. 1.

**Out of District Sewer Use Agreement - Continued**  
**Page 2**

- 6. The user agrees to be bound by all rules and regulations of said Sewer District as established by the Town Board of Henrietta from time to time and this Agreement may be terminated or amended by the District at any time by giving 60 days notice in writing to the user.

**In Witness Whereof**, the parties have executed this Agreement and the Supervisor on behalf of the Town Board of Henrietta be authorized to enter into such Agreement.

This Agreement will be effective on \_\_\_\_\_, 20 \_\_\_\_.

Sewer District Town Board of Henrietta  
475 Calkins Road  
Henrietta, New York 14467

User Roberta Pallifrone  
Owner(s) Name (Print)  
138 Valley View Drive  
Address  
West Henrietta NY, 14586  
City, State, Zip

By: \_\_\_\_\_  
Jack W. Moore  
(Town Supervisor)  
  
(CORPORATE SEAL)

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

Note: Must be signed in the presence of the Henrietta Town Clerk.

Attest: \_\_\_\_\_  
Address for giving notices  
  
\_\_\_\_\_  
  
\_\_\_\_\_

(If User is a corporation attach evidence of authority to sign.)

Town Board Resolution  
No. \_\_\_\_\_  
Date \_\_\_\_\_

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-169/2017

On Motion of  
Councilman Adair

Seconded by  
Councilman Breese

WHEREAS, the 2017 Drainage Department budget provides funds for the purchase of one (1) new 40FMR 40" flail mower attachment, and

WHEREAS, a flail mower, meeting specifications, is available from Bobcat of the Finger Lakes, 7216 Pittsford-Palmyra Road, Fairport, New York 14450 for a total cost of \$8,745.19.

THEREFORE, BE IT RESOLVED, that Bobcat of the Finger Lakes, 7216 Pittsford-Palmyra Road, Fairport, New York, 14450 be hereby awarded the purchase for one (1) new 40FMR 40" flail mower.

BE IT FURTHER RESOLVED, that the Director of Finance be hereby authorized to pay Bobcat of the Finger Lakes, in an amount not to exceed \$8,745.19, upon delivery, receipt of all proper documentation and acceptance by the Commissioner of Public Works.

Duly put to a vote:		
Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye
Carried		

**TOWN OF HENRIETTA  
DEPARTMENT OF PUBLIC WORKS  
MEMORANDUM**

September 5, 2017

To: Supervisor Moore and the Town Board  
From: Chuck Marshall, Commissioner of Public Works\Safety Officer  
Subject: Purchase of a new Excavator mounted Flail Mower

The 2017 Drainage Department equipment budget provides funds for the purchase of a new boom mounted flail mower for use with the new 308E excavator. Quotes were requested from three equipment suppliers in the area and a flail mower meeting specifications is available from Bobcat of the Finger Lakes for a not to exceed cost of \$8,745.19.

The town initiated a roadside trimming program in August to remove the weeds from the sidewalks and curbing, roads owned by the state and county, neither agency is doing any of this trimming anymore. The two areas that cannot be cut by trimmers are behind guiderail or approaches to bridges. This attachment to the excavator can handle this work as well as trimming some of the drainage ditches that cannot be reached by tractors or by hand.

Please pass a resolution authorizing the purchase of one (1) new 2017 40FMR flail mower attachment.



# Bobcat®

## Product Quotation

Quotation Number: 26405D02C63

Date: 2017-03-14 15:42:59

Ship to	Bobcat Dealer	Bill To
Town Of Henrietta Attn: Chuck 475 Calkins RD Henrietta, NY 14467 Phone: (585) 359-7006 Fax: (585) 359-7029	Bobcat of the Finger Lakes, Fairport, NY 7216 PITTSFORD-PALMYRA ROAD FAIRPORT NY 14450 Phone: (585) 223-4056 Fax: (585) 425-7644  Contact: Patrick Young Phone: 585-223-4056 Fax: 585-425-7644 Cellular: 585-506-2005 E Mail: patrick@djmequipment.com	Town Of Henrietta Attn: Chuck 475 Calkins RD Henrietta, NY 14467 Phone: (585) 359-7006 Fax: (585) 359-7029

Description	Part No	Qty	Price Ea.	Total
40" Flail Mower	7225486	1	\$7,140.20	\$7,140.20
--- Flail Mower Hoses 40FMR	7260182	1	\$174.80	\$174.80
--- Case Drain Kit E80,E85	7252158	1	\$270.99	\$270.99
Description	Part No	Qty	Price Ea.	Total
Cap for a Cat mx		1	\$986.70	\$986.70
Total of Items Quoted				<b>\$8,572.69</b>
Dealer P.D.I.				<b>\$0.00</b>
Freight Charges				<b>\$0.00</b>
Dealer Assembly Charges				<b>\$172.50</b>
Quote Total - US dollars				<b>\$8,745.19</b>

### Notes:

All prices subject to change without prior notice or obligation. This price quote supersedes all preceding price quotes. Customer must exercise his purchase option within 30 days from quote date.

**Customer Acceptance:**

Purchase Order: \_\_\_\_\_

**Authorized Signature:**

**Print:** \_\_\_\_\_ **Sign:** \_\_\_\_\_ **Date:** \_\_\_\_\_

### Finance Worksheet

QuoteFinance

## Chuck Marshall

---

**From:** Wasył Gudselał  
**Sent:** Tuesday, August 22, 2017 12:22 PM  
**To:** cmarshall@henrietta.org  
**Subject:** Fwd: 40" mower for Cat 308

----- Forwarded message -----

From: "Mark Kastner" <[mkastner@monroetractor.com](mailto:mkastner@monroetractor.com)>  
Date: Aug 22, 2017 7:14 AM  
Subject: 40" mower for Cat 308  
To: "[wgudselał@gmail.com](mailto:wgudselał@gmail.com)" <[wgudselał@gmail.com](mailto:wgudselał@gmail.com)>  
Cc:

Paladin Attachments

40" Excavator flail mower TR with GPM range 17-22

Kit Thumb Saddle factory install

Cat coupler mount

\$9935.00 3 weeks for delivery



**Mark Kastner** | District Manager

C: [585-303-2176](tel:585-303-2176)

F: [585-334-1480](tel:585-334-1480)

[mkastner@monroetractor.com](mailto:mkastner@monroetractor.com)



AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-170/2017

On Motion of  
Councilman Breese

Seconded by  
Councilman Page

WHEREAS, owners of several properties that use Henrietta sewer have outstanding sewer bills, and

WHEREAS, said property owners were billed in a timely fashion and given sufficient notice to pay their bills and any related late charges, and

WHEREAS, said property owners have failed and neglected to pay said bills, which are now in arrears, and

WHEREAS, Henrietta Town Code Section §219-6(C) authorizes the Town to add delinquent bills and penalties to the property tax bill of the property on which the sewer rent charge was incurred.

THEREFORE, BE IT RESOLVED, that the unpaid sewer charges, as per the attachment, totaling \$7,040.55 be added as a lien against said real property on the 2018 tax levy for collection.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried



## 2017 Henrietta Sewer Delinquencies

Tax Account #	Property Address	Lien Amount
148.20-1-18	1941 Bri-Hen TL Rd	\$68.86
161.07-1-2	360 Jefferson Rd	\$72.32
162.08-1-20	1560 Jefferson Rd	\$2.07
161.07-1-6	3047 West Henrietta Rd	\$148.05
149.20-2-2	3255 Bri-Hen TL Rd	\$4.88
149.20-2-12	3385 Bri-Hen TL Rd	\$14.13
175.03-1-4.1	4831 West Henrietta Rd	\$328.99
161.08-1-15.11	400 Jay Scutti Blvd	\$176.21
162.08-1-25	1530 Jefferson Rd	\$124.29
162.09-1-5	935 Jefferson Rd	\$354.36
150.17-3-1	3450 Winton Place	\$187.02
162.05-1-1	225 Mushroom Blvd	\$90.31
161.19-1-63	3990 West Henrietta Rd	\$27.28
162.14-3-18	2095 East Henrietta Rd	\$1.18
148.20-1-27.1	2996 West Henrietta Rd	\$19.83
190.05-1-1.211	3831 East Henrietta Rd	\$771.38
162.14-2-72	2080 East Henrietta Rd	\$20.92
161.10-1-8	160 Commerce Dr	\$75.39
162.06-1-3	1450 East Henrietta Rd	\$95.11
148.19-2-10	1379 Bri-Hen TL Rd	\$1.80
161.11-1-7.1	3300 West Henrietta Rd	\$921.00
162.06-1-5.2	1150 Jefferson Rd	\$273.00
175.03-1-42.1	530 Summit Point	\$80.63
162.10-1-28	1920 East Henrietta Rd	\$26.77
161.15-1-8	3699 West Henrietta Rd	\$160.36
162.14-2-67	2110 East Henrietta Rd	\$20.92
162.06-1-7	1100 Jefferson Rd	\$29.16
189.09-1-13	5781 West Henrietta Rd	\$136.48
161.08-1-7	3070 West Henrietta Rd	\$173.21
162.10-1-71	700 Commons Way	\$148.82
162.08-1-19.2	1580 Jefferson Rd	\$139.34
148.20-1-2	1583 Bri-Hen TL Rd	\$94.91
161.11-1-14	3675 West Henrietta Rd	\$21.38
149.20-2-7	3353 Bri-Hen TL Rd	\$42.97
161.10-1-3	20 Transport Dr	\$19.53
149.20-2-10	3375 Bri-Hen TL Rd	\$24.16
161.11-1-12.2	3543 West Henrietta Rd	\$45.01
162.05-1-1./T	208 Mushroom Blvd	\$5.25
176.09-1-69	1420 Lehigh Station Rd	\$65.59
163.06-1-29	2000 Jefferson Rd	\$987.47
175.07-1-1	4135 West Henrietta Rd	\$132.28
161.19-1-65	4018 West Henrietta Rd	\$379.50
162.06-1-10	900 Jefferson Rd	\$111.01
162.07-1-14.1	99 Ridgeland Rd	\$94.67
174.02-1-41	75 Lucious Gordon Dr	\$78.21
161.15-1-9	3685 West Henrietta Rd	\$27.19
162.09-1-4	911 Jefferson Rd	\$217.35

187.04-2-6.21	520 Scotts-West Hen. Rd	\$19.06
161.01-1-5	175 Jefferson Rd	\$46.13
175.07-1-4	4199 West Henrietta Rd	\$82.92
161.06-1-5.2	339 Jefferson Rd	\$504.36
161.10-1-20	15 Transport Dr	\$95.24
163.17-1-5	1484 Calkins Rd	\$2.97
161.16-1-2.1	1575 Marketplace Dr	\$22.06
149.18-1-2	2433 Bri-Hen TL Rd	\$2.28
175.09-1-68	530 Lehigh Station Rd	\$19.53
162.08-1-21	6259 Winton Rd S.	\$45.77
175.07-1-5	4138 West Henrietta Rd	\$45.77
162.11-1-18	75 Saginaw Dr	\$95.12
175.03-1-48	250 Summit Point	\$47.58
174.02-1-3.2	211 Bailey Rd	\$354.82
162.14-1-7	2001 East Henrietta Rd	\$4,996.75
163.05-1-82.2	75 Goodway Dr	\$22.81
161.11-1-12.1	3535 West Henrietta Rd	\$20.46
162.14-2-70	2092 East Henrietta Rd	\$91.23

**\$7,040.55**

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-171/2017

On Motion of  
Councilman Page

Seconded by  
Councilwoman Zinck

WHEREAS, the Town of Henrietta signed an Agreement with MuniBilling Utility Billing Solutions ("MuniBilling") to process all Commercial and Apartment Sewer bills (authorized by Resolution #13-142/2017 on July 19, 2017), and

WHEREAS, MuniBilling uses Heartland Payment Services ("HPS") to process all online payments, and the Town is desirous of offering online payments for sewer billing payments, and

WHEREAS, the Town has received a Processing Agreement ("Agreement") from HPS to authorize the use of HPS services to process online credit/debit card and ACH transactions, and

WHEREAS, the Town Attorney has reviewed said Agreement and found it to be in good order following the inclusion of an Addendum to the Government and Public Education Credit/Debit Card Processing Agreement, an Addendum to the Government and Public Education ACH Processing Agreement, and an Addendum to the Web Application Service Agreement with MuniBilling ("Addendums"), which said Agreement and Addendums are attached hereto.

THEREFORE, BE IT RESOLVED, that the Supervisor be authorized to sign said Agreement and Addendums.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried



**GOVERNMENT AND EDUCATION  
MERCHANT PROCESSING AGREEMENT**

Card Only    ACH Only    Dual

**HEARTLAND CONTACT INFORMATION**

RM: Greg Ganim Phone: 972-841-4776 Fax: \_\_\_\_\_  
 Affiliate/Partner ID : 9MUNIBIL Affiliate Name: MuniBilling Current MID: \_\_\_\_\_

**COMPANY INFORMATION**

Merchant DBA Name: Town of Henrietta DBA Phone#: 585-359-7035  
 Address: 475 Calkins Road # Locations: \_\_\_\_\_  
 City: Rochester State: NY Zip: 14623  
 CS Phone #: 585-359-7035 Fax #: 585-334-9667  
 Primary Contact Name: Jennifer Miranda Phone #: 585-359-7039  
 Authorized to Purchase:  Yes    No  
 Secondary Contact Name: Heather Voss Phone #: 585-359-7040  
 Authorized to Purchase:  Yes    No  
 Email Address: jmiranda@henrietta.org  
 (Heartland InfoCentral Admin User Email Address)  
 Email Contact: First Name: Jennifer Last Name: Miranda  
 Website Address: https://secure.munibilling.com.  
 Legal Name: Town of Henrietta Federal Tax ID / EIN: 166002276  
 (Please Complete – Must correspond with IRS Filing Name) (Must correspond with  
 Legal Name)  
 Address: 475 Calkins Road Phone #: 585-359-7035  
 City: Rochester State: NY Zip: 14623

**CARD FEE SCHEDULE**

Service Requested	Discount Rate	Discount Per Item	Trans Fee Dial	Trans Fee IP	Annual Volume: \$50,000	Average Ticket: \$1,800
Visa	%	\$	\$	\$	High Ticket: \$	Frequency: _____
MasterCard	%	\$	\$	\$	<input type="checkbox"/> Service Fee (Pass Through/Single Transaction)	
Discover/JCB	%	\$	\$	\$	<input checked="" type="checkbox"/> COST PLUS	
PayPal	%	\$	\$	\$		
PIN Debit*			\$	\$	*Plus Applicable Debit Network Fees	
TSYS Authorization			\$	\$		
American Express	%	\$	\$	\$	Annual Volume: \$	Average Ticket: \$
					Note: OptBlue Annual Processing Volume > \$1 Million must go Direct	
					<input type="checkbox"/> OptBlue <input type="checkbox"/> I opt out of receiving marketing material from American Express	
American Express Merchant #:			American Express Franchise Name:			Franchise CAP #:

**RECURRING FEES**

Chargeback Fee: \$25.00   Bolletta Fee: \$0.00   Voice Auth Fee: \$0.65   SRM Fee: \$20.00

**INTERCHANGE QUALIFICATION**

MOTO/Internet    Retail    Small Ticket    All Cards Accepted    Standard    Monthly    Daily Net

**SALES METHOD**

SALES METHOD		CARD PROCESSING METHOD	
On Premise Face to Face Sales	<input type="radio"/> %	Mail Order Sales	<input type="radio"/> %
Off Premise Face to Face Sales	<input type="radio"/> %	Real-Time Internet	100%
Inbound Telephone Order Sales	%	Internet (keyed)	<input type="radio"/> %
Outbound Telephone Order Sales	<input type="radio"/> %	Recurring Billing	<input type="radio"/> %
		Total = 100%	

What percentage of your Bankcard volume is future delivery   0 %

ACH FEE SCHEDULE				
Enable ACH Account Verification: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			Please provide the expected ACH data below.	
Fee Type	Dollar	Percentage	Annual ACH Volume	\$2000000
<input type="checkbox"/> Transaction Fee	\$ 0.00	%	Average ACH Ticket Amount	\$1,800
<input type="checkbox"/> Service Fee	\$ 0.60	%	Average Number of ACH Transaction per Month	100
<input checked="" type="checkbox"/> Return Item Fee	\$5.00		High ACH Ticket Amount	\$10,000
<input checked="" type="checkbox"/> Re-presentment Fee*	\$2.00		High Ticket Frequency	4/yr
*Re-presentment (Limitation of 2 per NACHA guidelines)			Max ACH Limit	\$10,000
<b>Note: For High Ticket Transactions, an additional 15bp will be assessed on the amount above \$10,000.</b>				

ACH PROCESSING METHOD			
Note: Must equal 100%			
	Single ACH Debit	Recurring ACH Debit	Credit
CCD (Corporate Credit or Debit)	30%	30%	%
PPD (Prearranged Payment and Deposit)	%	70%	%
TEL (Telephone)	%		
WEB	100%	%	%
<input checked="" type="checkbox"/> ACH Debit (PPD/CCD/WEB)		<input type="checkbox"/> ACH Conversion – Certification Required (BOC/ARC/POP)	
<input type="checkbox"/> ACH TEL (IVR / Other TEL Entry Types*)		Terminal Type:	
Vendor: <input type="checkbox"/> Heartland <input type="checkbox"/> Third Party:		Check Reader/Imager:	
*Merchant can accept ACH payments via Cashier/Virtual terminal; however, call must be recorded and be available as proof of authorization.		Virtual Terminal:	
		Number of Terminals:	

ACH DESCRIPTOR
Phone number as it will appear on customer statements:
Company name as it will appear on customer bank statements (Max 16 Characters):

AUTHORIZATION METHOD (Not applicable to ACH Conversion)
Which authorization procedure does Merchant utilize to confirm customers consent to an ACH Debit:
<input type="checkbox"/> Signed written authorization from customer (Does not apply to Web) <ul style="list-style-type: none"> <li><input type="checkbox"/> Heartland provides Authorization Form Template</li> <li><input type="checkbox"/> Merchant created Authorization Form</li> </ul>
<input checked="" type="checkbox"/> Web Authorization (Applies to Web only) <ul style="list-style-type: none"> <li><input type="checkbox"/> Customer provides electronic signature <input checked="" type="checkbox"/> Customer logs in a username and password</li> </ul>
<input type="checkbox"/> Recorded Verbal Authorization (Tel Only) <ul style="list-style-type: none"> <li><input type="checkbox"/> Heartland provided script <input type="checkbox"/> Merchant created script</li> </ul>
If utilizing Recorded Verbal Authorization; check one of the following:
<input type="checkbox"/> Hosted secure IVR (Automated or Live Agent) recording services offered by Heartland <input type="checkbox"/> Merchant has existing recording service to capture verbal customer authorizations
How are recordings stored:
<input type="checkbox"/> Via website URL: <input type="checkbox"/> Via phone: #:
<b>REQUIRED: When Merchant utilizes their own Authorization Script this must be submitted with ACH Application.</b>

MERCHANT DETAIL		
Type of Business: <input type="checkbox"/> Public <input checked="" type="checkbox"/> Private	Date Business Started:	Business is Conducted: 70% Consumer
Type of Ownership: <input type="checkbox"/> Corporation <input type="checkbox"/> Government <input checked="" type="checkbox"/> Municipalities	Are web based sales processed by HPS: Yes	
What Products and / or services do you provide: Sewer Bills		
Is there a peak week / date in the month for processing recurring transactions: (i.e., 1 <sup>st</sup> and 15 <sup>th</sup> ):		Quar
Define your Refund Policy: – Refunds are done only when there is an overpayment.		

PCI Compliance	
Is your business PCI Compliant: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Does your company utilize a Data Storage Entity or Merchant Servicer that has access to card member data (i.e., Payment gateway or data warehouse, etc.): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, provide the name of the Data Storage Entity or Merchant Servicer being utilized:	MuniBilling
PCI DSS and Card Network rules prohibit storage of sensitive authentication data after the transaction has been authorized (even if encrypted). If you or your POS system store, process, or transmit full cardholder's data, then you (merchant) must validate PCI DSS compliance. If you (merchant) utilize a payment application the POS software must be PA DSS (Payment Application Data Security Standards) validated where applicable. If you use a payment gateway, they must be PCI DSS Compliant.	
As required under the Payment Card Industry Data Security Standard (PCI DSS), I do hereby declare and confirm the following:	
Merchant will maintain full PCI DSS compliance at all times and will notify Heartland when it changes its point of sale software, system, application or vendor: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Do your transactions process through any other Third Parties (i.e. web hosting companies, gateways, corporate office): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Merchant utilizes the services of a PCI SSC Qualified Integrator Reseller (QIR) when POS payment applications are utilized: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
The signing merchant listed below has experienced an account data compromise.*: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I have never accepted payment cards.)	
If yes, what was the date of the compromise: _____ Copy of the completed Forensic Investigation is required with Application.	
The signing merchant listed below is storing Sensitive Authentication Data** (even if encrypted) after the transaction has been authorized: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I have never accepted payment cards.)	
Merchant utilizes an EMV enabled terminal: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
*An Account Data Compromise is any incident that results in unauthorized access to payment card data and/or Sensitive Authentication Data.	
**Sensitive Authentication Data is security related information (Card Verification Values, complete Magnetic Stripe Data, PINs, and PIN blocks) that is used to authenticate cardholders.	
Please note that if you have indicated that your organization has experienced an account data compromise in the past, a PCI DSS Level 1 Compliance Assessment may be required upon Heartlands request. A compromise of cardholder data from your location(s) may result in the issuance of fines and/or penalties by the card brand, for which you will be responsible under your Merchant Agreement, notwithstanding this Compliance Statement.	
It is imperative that you notify Heartland immediately should the information on this Compliance Statement change.	

STATEMENT OPTIONS		DISPUTE LETTERS	
Statement Type:	<input checked="" type="checkbox"/> Standard	Mail Options:	<input type="checkbox"/> Legal <input checked="" type="checkbox"/> DBA
Mail Statements To:	<input checked="" type="checkbox"/> Suppress Stmt's <input type="checkbox"/> Legal	Electronic Options*	<input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax (*Select mail option as backup)
<input checked="" type="checkbox"/> All Electronic Communications (Including ACH Returns):			
<input type="checkbox"/> Same Email as InfoCentral <input type="checkbox"/> Preferred Email Address: jmiranda@henrietta.org			

**AUTHORIZED SIGNER(S) INFORMATION**

Is any owner, officer, director, employee, or agent a current or former senior official in the executive, legislative, administrative, military, or judicial branch of any government (elected or not); a senior official of a major political party; an executive of a government-owned commercial enterprise; a family member of any of the foregoing officials; or a close personal or professional associate of any of the foregoing officials?  Yes  No If "yes," please attach details.

<b>(1) Authorized Signer Name:</b> Jack W. Moore		Title: Town Supervisor	
SSN:	DOB: 01/07/1957	Driver's License #:	
Home Address	City:	ST:	Zip:
<b>(2) Authorized Signer Name:</b>		Title:	
SSN:	DOB:	Driver's License #:	
Home Address:	City:	ST:	Zip:

**DEBIT / CREDIT AUTHORIZATION**

By signing below, Merchant certifies that any verification of business provided is for a business account in good standing and that the business name on the account is the same as the business name on the enclosed Heartland Payment Systems Merchant Application. Merchant hereby authorizes Acquirer to debit and credit Merchant's checking/savings/GL Account. This authority shall remain in full force until (a) Acquirer has received written notification from Merchant of its termination; and (b) all obligations of Merchant to Acquirer under this Agreement have been paid in full.

Depository Bank Name: M&T Bank	Phone #:
City: Rochester	ST: NY Zip:

CARD	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one) <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	501000020	9866451579
FUNDS TRANSFER METHOD <input checked="" type="checkbox"/> Deposits <input type="checkbox"/> Fees <input type="checkbox"/> Both	Name as it appears on Account: Town of Henrietta	

	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one) <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	053000219	2642264200
FUNDS TRANSFER METHOD <input type="checkbox"/> Deposits <input checked="" type="checkbox"/> Fees <input type="checkbox"/> Both	Name as it appears on Account: Crestline Soft	

ACH	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one) <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	501000020	9866451579
FUNDS TRANSFER METHOD <input checked="" type="checkbox"/> Deposits <input type="checkbox"/> Fees <input type="checkbox"/> Both	Name as it appears on Account: Town of Henrietta	

	TRANSIT ROUTER / ABA NUMBER (9 digits)	ACCOUNT NUMBER (14 digits)
ACCOUNT TYPE (check one) <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings	053000219	2642264200
FUNDS TRANSFER METHOD <input type="checkbox"/> Deposits <input checked="" type="checkbox"/> Fees <input type="checkbox"/> Both	Name as it appears on Account: Crestline Soft	

**AGREEMENT ACCEPTANCE, CERTIFICATION and CONSUMER REPORT AUTHORIZATION**

Has your business filed Bankruptcy, had Judgments or Liens within the last 3 years:  Yes  No

Merchant authorizes Acquirer, reporting agency employed by Acquirer, or any agents thereof, to investigate the references, statements or data provided by Merchant or the undersigned for purposes of all matters generally connected to this business relationship. I further certify that I have received, read, understand and agree to the Merchant Processing Agreement Terms and Conditions which together with this application shall constitute the agreement(s) between the parties. I further certify that this business or any Owner/Officer/Authorized Signer has never been terminated by any Card Brand.

X	Jack W. Moore-Town Supervisor	
(1) Authorized Signer Signature	Print Name & Title	Date
X		
(2) Authorized Signer Signature	Print Name & Title	Date

**THE TERM OF THIS AGREEMENT IS 1 MONTHS**

# Heartland

## Terms & Conditions Acknowledgement

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"Merchant" acknowledges that Heartland Payment Systems, Inc. ("Heartland") has provided it with a copy of the ACH Processing Agreement – ACH Acceptance Policies | Procedures | Terms & Conditions (the "Terms and Conditions") and the Application, which together make up the entire agreement between the parties. Merchant has read, understands, and agrees to be bound by the Terms and Conditions, as may be amended from time to time.

Merchant acknowledges that the Terms and Conditions are a fundamental part of the parties' agreement without which Heartland would not be able to enter into an agreement with the Merchant.

In addition, Merchant can request another copy of the Terms and Conditions at any time by sending a written request for a copy to Heartland at the following address:

Heartland Payment Systems; Attn Customer Care; One Heartland Way; Jeffersonville IN 47130

Title of the Agreement Received: Government and Public Education ACH Processing Agreement Terms and Conditions

Creation or Revision Date of the Agreement Received: \_\_\_\_\_

<u>X</u>	<u>Jack W. Moore, Town Supervisor</u>	
Merchant Signature	Print Name and Title	Date

<u>X</u>	<u>Greg Ganim - Bolletta/eComm SPA</u>	
Relationship Manager Signature	Print Name and Title	Date

# Heartland

## Terms & Conditions Acknowledgement

"Merchant" acknowledges that Heartland Payment Systems, Inc. ("Heartland") has provided it with a copy of the Government and Public Education Processing Terms & Conditions (the "Terms and Conditions") and the K-12 and/or Government and Education Merchant Agreement Application, which together make up the entire agreement between the parties. Merchant has read, understands, and agrees to be bound by the Terms and Conditions, of which may be amended from time to time as provided in the Agreement. Merchant acknowledges that the Terms and Conditions, are a fundamental part of the parties' agreement without which Heartland would not be able to enter into an agreement with the Merchant.

\_\_\_\_\_  
Jack W. Moore-Town Supervisor

\_\_\_\_\_  
Merchant Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Merchant Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

### Site Inspection

I hereby verify that (check one)

This District and their locations have the proper facilities, equipment, inventory, and proper accreditation certificates required to conduct the business.

I was not reasonably able to complete a Site Inspection of the Merchant at this Address, and the information stated below is correct to the best of my knowledge and belief. Please explain why a site inspection could not be performed: Located in New York.

\_\_\_\_\_  
Inspected By: Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**NOTE: It is required that the following questions be completed.**

Is business signage present:  Yes  No Describe signage: \_\_\_\_\_

Number of Terminals: \_\_\_\_\_ Locations: \_\_\_\_\_ Are card acceptance logos displayed for easy view:  Yes  No

If this is an additional location to an existing HPS merchant under the same District, was a site inspection performed on any of the locations?  Yes  No



# Member Sponsor Bank Disclosure

# Heartland

**Service Provider Contact Information:**  
 Heartland Payment Systems  
 One Heartland Way, Jeffersonville, IN 47130  
 HeartlandPaymentSystems.com  
 (888) 963-3600

Merchant Name: Town of Henrietta

Address: 475 Calkins Road

City: Henrietta

ST: NY

Zip: 14467

Contact Name: Jack W. Moore, Town Supervisor Phone #: 802-864-7454

### IMPORTANT MERCHANT RESPONSIBILITIES

1. Merchant must ensure compliance with cardholder data security and storage requirements.
2. Merchant must maintain fraud and chargeback below thresholds.
3. Merchant must review and understand the terms of the Merchant Processing Agreement.
4. Merchant must comply with the Card Brands Operating Regulations.
5. Merchant must retain a signed copy of this Disclosure Page.

**Note:** The responsibilities listed above do not supersede terms of the Merchant Processing Agreement and are provided to ensure the merchant understands some important obligations of each party and that the Member Sponsor Bank (Acquirer) is the ultimate authority should the merchant have any problems.

### IMPORTANT MEMBER SPONSOR BANK (ACQUIRER) RESPONSIBILITIES

1. The Member Sponsor Bank is the only entity approved to extend acceptance of Card Brand products directly to a Merchant.
2. The Member Sponsor Bank must be a principal (signer) to the Merchant Processing Agreement.
3. The Member Sponsor Bank is responsible for educating Merchants on pertinent Card Brand Operating Regulations with which Merchants must comply.
4. The Member Sponsor Bank is responsible for and must settle funds with the Merchant.
5. The Member Sponsor Bank is responsible for all funds held in reserve that are derived from settlement.

### MERCHANT RESOURCES

1. You may download Visa Regulations from Visa's website at: <http://usa.visa.com/merchants/merchant-support/international-operating-regulations.jsp>
2. You may download MasterCard Rules from MasterCard's website at: <http://mastercard.com/us/merchant/support/rules.html>.

### Member Sponsor Bank (Acquirer) Information:\*

**Barclay Bank**  
 125 South West Street  
 Wilmington, DE. 19801  
 Phone: (302) 662-8990

**The Bancorp Bank**  
 409 Silverside Road, Suite 105  
 Wilmington, DE. 19809  
 Phone: (302) 385-5000

**Wells Fargo Bank, N.A**  
 1200 Montego  
 Walnut Creek, CA 94598  
 Phone: (925) 746-4167

### Debit Bank Sponsor

**Bay Bank, FSB**  
 7151 Columbia Gateway Drive  
 Suite A  
 Columbia, MD 21046

I, the undersigned hereby acknowledge and agree that Heartland Payment Systems will select one of the Member Sponsor Bank's listed above based on the following criteria; business type, POS equipment compatibility, depository institution and/or existing HPS relationship. Heartland Payment Systems will provide Merchant a written notification of the Member Sponsor Bank that is selected. By presenting any Card Brand Transaction to Heartland Payment Systems under the Merchant Processing Agreement from and after notice of the Member Sponsor Bank, you agree that the Member Sponsor Bank so selected shall be immediately a principal party (signer) to the Merchant Processing Agreement, regarding acceptance of Card Brand transactions.

Jack W. Moore, Town Supervisor

Merchant's Name Printed	Merchant's Signature	Date
<b>Bank Use Only</b>		
		Greg Ganim
Date Received	Date Installed	HPS Rep Name

# GOVERNMENT AND PUBLIC EDUCATION CREDIT/DEBIT CARD PROCESSING AGREEMENT TERMS & CONDITIONS

## 1. Services

HPS will, during the term of this Agreement and pursuant to its terms and conditions,

- (a) be responsible for and will settle funds with the Merchant;
- (b) provide the following payment processing solutions to the Merchant:
  - (i) Web Payment Solutions;
  - (ii) Cashiering Payment Solutions as may be selected by Merchant on the Merchant Application.

## 2. Definitions

- 2.1 **“Account”** means a commercial checking account maintained by Merchant for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 2.2 **“ACH”** means the Automated Clearing House service offered by the Federal Reserve.
- 2.3 **“Agreement”** means this Merchant Processing Agreement, the Merchant Application and the Addendum, as applicable. This contract incorporates the Merchant Processing Agreement, the Merchant Application, and the Addendum, as applicable, by reference, with the same force and effect as if it were given in full text. Upon request, HPS will make their full text available.
- 2.4 **“Authorization”** means the act of obtaining approval from the Card Issuer for an individual Transaction.
- 2.5 **“Card”** means a valid credit, debit, charge or other payment card accepted by Merchant under this Agreement with HPS.
- 2.6 **“Card Schemes” used interchangeably with Card Brands** means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc., Discover Financial Services or any other Card Issuer that provides Cards that are accepted by Merchant under this Agreement with HPS, including on-line debit card Transactions and on-line debit networks.
- 2.7 **“Card Issuer”** means the financial institution or company that has provided a Card to the Cardholder.
- 2.8 **“Cardholder” used interchangeably with Card Member** means the person or Card Member whose name is embossed upon the face of the Card.
- 2.9 **“Card-Not-Present Transaction”** means any Transaction for which required data is not electronically captured by reading information encoded in or on the Card and includes mail order, telephone order and Internet Transactions.
- 2.10 **“Cashiering Payment Solution”** means an automated solution which will allow Cardholders to pay Merchant via an HPS-provided virtual terminal or physical terminal.
- 2.11 **“Chargeback”** means the procedure by which
  - (a) a sales Transaction (or disputed portion thereof) is returned to HPS by a Card Issuer because such item does not comply with the Card Issuer’s applicable rules or operating regulations or for any other reason as provided in this Agreement and
  - (b) the Merchant’s Account is debited for such return.
- 2.12 **“Convenience Fee”** means a fee charged to a consumer that will cover the costs of providing the convenient alternative payment solutions such as the Web Payment Solution and certain Cashiering Solutions.
- 2.13 **“Credit Voucher”** means a document or transaction executed by Merchant evidencing any refund or price adjustment relating to products or services to be credited to a Cardholder account.
- 2.14 **“Debit Networks”** means the authorization networks utilized by Merchant for PIN Debit Transactions.

- 2.15** “**EMV Card**” refers to a form of smart payment card with technical standards originally created by Europay, MasterCard and Visa (EMV) embedded with a chip containing encrypted Cardholder account information, which is readable by an EMV-enabled device. An EMV Card may be used by:
- (a) inserting it into a card reader that is integrated with a point of sale system; or
  - (b) by tapping it against a point of sale device’s contactless reader. Visit <http://www.emv-connection.com/> for more information on EMV.
- 2.16** “**EMV Transaction**” means the electronic acceptance of an EMV Card’s chip data by point of sale equipment or other electronic payment device at the time of Sale, and the inclusion of that data with the electronic submission of the Sale. Only a “Card Swipe”, “EMV Transaction” or its manual equivalent, an “Imprint”, is acceptable by the Card Scheme as proof that the Card was present at the time of the Sale.
- 2.17** “**HPS**” means collectively Heartland Payment Systems, Inc., a registered ISO of Member Sponsor Banks.
- 2.18** “**Merchant**” generally means the party identified as the recipient of this Agreement. It can cover the merchant itself and any third party that may be associated with them (i.e. VARs, gateway providers etc.).
- 2.19** “**MCC**” also known as “**Merchant Category Code**” is a 4 digit number used to describe the Merchants primary business.
- 2.20** “**Member Sponsor Bank**” is a bank that has obtained a membership with the Card Brands to allow processor access to the Card Brand Networks.
- 2.21** “**Outbound Telemarketing Transaction**” means a transaction in which a sale of products or services results from a Merchant-initiated contact with a Cardholder via a telephone call, or a mailing (other than a catalog) that instructs the Cardholder to call the Merchant.
- 2.22** “**Pass Through**” means charging the Merchant the precise amount of monies designated as Interchange, Costs, Dues, Assessments and Fees as per the Card Schemes. Pass Thru or Pass Through means no mark-ups are taken by the Payment Processor or any other party when Interchange, Dues, Fees, Costs and Assessments are collected from the Merchant.
- 2.23** “**Payment Facilitator**” is a merchant of record who facilitates transactions on behalf of a sub-merchant whose volume is less than USD 100,000 in MasterCard and Maestro volume combined.
- 2.24** “**Payment Service Provider (PSP)**” is an entity contracting with a Visa, Discover or American Express member to provide payment services to sponsored merchants. The new term PSP replaces the old terminology IPSP which now includes all commerce type aggregation, including face-to-face in addition to ecommerce merchant aggregation.
- 2.25** “**Products**” means all goods and payment services that are sold or offered by the Merchant.
- 2.26** “**Rules**” means the operating regulations, requirements terms and conditions of the Card Schemes presently in effect and as they may be amended from time to time.
- 2.27** “**Sales Draft**” means an electronic receipt evidencing a sales Transaction.
- 2.28** “**Sub-merchant**” is a customer conducting business through a Third Party relationship acting as a Payment Facilitator (PF) or Payment Service Provider (PSP).
- 2.29** “**Third Party Agent (TPA)**” means entities that have been engaged by a Merchant or a member to perform contracted services on behalf of that Merchant or member, including value add resellers (VARs) and payment gateway providers.
- 2.30** “**Transaction**” means any retail sale of Products or Services, or credit therefore, from a Merchant for which the customer makes payment using any Card presented to HPS for payment.
- 2.31** “**Virtual Terminal**” means a credit Card processing equipment on a secure server on the Internet whereby Merchant can key enter credit Card Transactions manually.
- 2.32** “**Voice Authorization**” means an Authorization obtained by a direct-dialed telephone call.

**2.33** “**Web Payment Solution**” may be used interchangeably with “Heartland Hosted Website” and means an automated solution that will allow Cardholders to pay a Merchant on a hosted website.

### **3. Data Security Requirements**

**3.1** The PCI Security Standards Council (“PCI SSC”) was founded by American Express, Discover Financial Services, JCB, MasterCard Worldwide and Visa, Inc. All five founders agreed to incorporate PCI Data Security Standards (“PCI DSS”) as the technical requirements of each of their data security compliance programs. The PCI SSC is responsible for the Payment Application Data Security Standard (“PA-DSS”) and PIN Transaction Security Requirements for PIN-Entry Devices (“PED”).

More information, including the complete PCI DSS specifications can be found at [www.pcisecuritystandards.org](http://www.pcisecuritystandards.org).

Each of the Card Schemes has requirements based on PCI DSS that define a standard of due care and enforcement for protecting sensitive information. Merchant must meet the compliance validation requirements defined by the Card Schemes available at:

[www.visa.com/cisp](http://www.visa.com/cisp)

[www.mastercard.com/sdp](http://www.mastercard.com/sdp)

[www.discovernetwork.com/fraudsecurity/disc.html](http://www.discovernetwork.com/fraudsecurity/disc.html)

[www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity) - For American Express Direct Merchants Only.

The Card Schemes or HPS may levy fines, suspend or terminate services, or impose other restrictions if it is determined that Merchant is not compliant with applicable security standards. Merchant is responsible for all fines and fees assessed by any Card Scheme in connection with violation of data security standards.

### **4. Rights, Duties, and Responsibilities of Merchants**

**4.1** Merchant agrees that during the term of this Agreement HPS shall be the primary provider for all payment processing services provided hereunder.

**4.2** Merchant's policy for the adjustment of payment rendered shall be disclosed to the Cardholder before a Card sale is made. If Merchant does not make these disclosures, a full refund in the form of a credit to the Cardholder's Card account must be given. In no circumstances shall any cash refunds be given on any item originally charged to a card.

**4.3** MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT CONSTITUTE (A) A WARRANTY THAT THE PERSON PRESENTING THE CARD IS THE RIGHTFUL CARDHOLDER, OR (B) A PROMISE OR GUARANTEE BY HPS THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT CHARGEBACK OF AN AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.

**4.4** Merchant shall at all times maintain a direct deposit account (the “Account” or “DDA”), in good standing, at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds shall be made automatically to the Account. Merchant also agrees that it is responsible for all fines, fees, Chargebacks, Credit Vouchers, payments and adjustments and other amounts due under the terms of this Agreement (including but not limited to attorney's fees and early termination charges) which shall be automatically made to the Account. Merchant shall not close, restrict or change the Account without prior written approval from HPS. Merchant agrees to pay HPS a twenty-five dollar (\$25.00) fee on all returned ACH items. Merchant is solely liable for all fees and all overdrafts, regardless of cause. HPS shall have the unlimited right to debit without prior notice, any Account containing funds for the purpose of satisfying any liability incurred on behalf of Merchant.

**4.5** Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance, or make a cash disbursement to any other Cardholder (including Merchant when acting as a Cardholder), or receive monies from a Cardholder and subsequently prepare a credit to Cardholder's account.

**4.6** As partial consideration for this Agreement, Merchant expressly authorizes HPS to change the Member Sponsor Bank providing settlement services to Merchant. Merchant agrees to execute all necessary documents enabling HPS to effect such change, as may be required by HPS.

- 4.7 Intentionally Removed
- 4.8 Merchant shall give HPS immediate written notice of any complaint, subpoena, Civil Investigative Demand or other process issued by any state or federal governmental entity that alleges, refers or relates to any illegal or improper conduct of Merchant. Failure to give such notice shall be deemed to be a material breach of this Agreement.
- 4.9 Merchant shall not be assessed a Chargeback Fee for the first three Chargeback requests processed in any twelve month period beginning with the Merchant's anniversary date. Once three Chargeback requests have been submitted by the Card Scheme or Bank in any such 12 month period, HPS shall bill the Chargeback Fee applicable at that time. For purposes of this Section 4.9, the anniversary date shall be the date of Merchant's first deposit with HPS unless otherwise designated by HPS.
- 4.10 Merchant shall ensure HPS has the correct business taxpayer ID ("TIN") and legal name on file for Form 1099-K tax reporting purposes. Any merchant reporting an invalid TIN and legal name combination is subject to backup withholding of an amount as defined by applicable state tax and IRS regulations.
- 4.11 Merchant shall at all times comply with the Rules and operating regulations of each of the Card Schemes and American Express as well as all applicable federal, state, and local, rules and regulations. Moreover, in the event of Merchant's non-compliance, Merchant accepts the responsibility for the payment of any and all fees and penalties levied because of its non-compliance.
- 4.12 Merchant agrees that it will not knowingly introduce into HPS' System any virus, "time bomb", or any other contaminant, including but not limited to, codes, commands, or instructions that could damage or disable HPS' System or property.
- 4.13 Merchant shall assume responsibility for managing the repair of problems associated with Merchant's own telecommunications and processing system (both hardware and software), including terminals.
- 4.14 MSP/TPA/PSP/PF must comply with all Rules as set forth in this Agreement and the following websites:  
•[http://usa.visa.com/merchants/risk\\_management/thirdparty\\_agents.html](http://usa.visa.com/merchants/risk_management/thirdparty_agents.html)  
•[http://www.mastercard.com/us/merchant/pdf/BMEntire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BMEntire_Manual_public.pdf)
- 4.15 Payment Service Provider (PSP)/ Payment Facilitator (PF) agrees to promptly disclose to their Sub-merchant any new or increased Card Scheme related Dues, Assessments and Fees, including but not limited to Convenience fees, in accordance to the contracted services performed by the Merchant.
- 4.16 Merchant must meet requirements as defined by the Card Schemes. Information is available at:  
[www.visa.com](http://www.visa.com)  
[www.mastercard.com](http://www.mastercard.com)  
[www.discovernetwork.com](http://www.discovernetwork.com)  
[www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide) - For American Express OptBlue Program Merchants Only.  
[www.americanexpress.com](http://www.americanexpress.com) - For American Express Direct Merchants Only.

## 5. Debit Card Processing

- 5.1 Merchant understands and agrees that HPS and Carrolton Bank or any other bank to which this agreement is assigned is a sponsored affiliate or member of each debit network and HPS is a service provider for processing Merchant's debit card Transactions pursuant to the terms herein.
- 5.2 Any claims Merchant may have regarding Debit services may not be offset against Bankcard sales.
- 5.3 Debit transactions are governed by network regulations as well as federal and state laws and regulations, including but not limited to the Electronic Funds Transfer Act, and Regulation E, pursuant to which consumers may have up to sixty (60) days to dispute a Transaction. Merchant shall comply with all applicable federal, state and local laws and regulations.

## **6. Fees**

- 6.1** HPS may amend the Fees set forth in the Merchant Application as follows: If Convenience Fees are fixed, then HPS may amend such Fees if
- (a) any Card Scheme or third party changes its fees with HPS or
  - (b) the average ticket size increases from the average ticket size of the previous thirty (30) day period.

If Convenience Fees are percentage-based, then HPS will only amend such Fees if any Card Scheme or third party changes its fees with HPS. The amended Fees shall be effective on the date specified in a written notice thereof, which date shall not be fewer than fifteen (15) days after the date of notice. Merchant shall attach each such revised Schedule of Fees, or written notice to the Merchant's copy of this Agreement.

- 6.2** Merchant shall pay all applicable sales taxes for services and products provided by HPS.
- 6.3** Merchant shall pay such fees and charges as may be set by HPS for any requested system enhancements or services in addition to those specified herein or in the Application or as may be requested by applicable law or changes in Card Scheme Rules.

## **7. Rights, Duties and Responsibilities of HPS**

- 7.1** Merchant acknowledges that HPS may provide payment transaction processing services hereunder through contracts or subcontracts with third parties engaged in the business of transaction processing and authorizations, and specifically authorizes such third parties to exercise all of the rights of HPS hereunder. Upon request in writing by Merchant, HPS will identify the third parties involved in Merchant's processing.
- 7.2** HPS may, through its performance of the Services, provide Merchant with access to equipment and other hardware, software, including interface applications, processes and other such tangible or intangible property of HPS. HPS retains all ownership rights to such property and does not provide any license or any other use other than as specifically set forth herein.
- 7.3** HPS will accept all Sales Drafts deposited by Merchant that comply with the terms of this Agreement. HPS will pay to Merchant the total face amount of each Sales Draft, less any Credit Vouchers, or adjustments determined. All payments, credits and charges are subject to audit and final review by HPS and prompt adjustment shall be made as required. Notwithstanding any other provision in this Agreement, HPS may refuse to accept any Sales Draft, revoke its prior acceptance, or delay processing of any Sales Draft for any reasonable period of time, as HPS deems necessary and appropriate. HPS shall have no liability to Merchant for additional charges, higher rates, or any other loss, expense or damage Merchant may incur directly or indirectly due to any such refusal, revocation or delay.
- 7.4** HPS will accept all customer service calls and other communications from Merchant, relating to the services provided under this Agreement including, but not limited to, equipment service, disbursement of funds, account charges, Merchant statements and Chargebacks. Merchant waives any claim relating to amounts charged to Merchant or amounts paid to unless presented within forty-five (45) days of statement date.
- 7.5** HPS will process all requests for Sales Drafts and Chargebacks from Card Issuers and will provide Merchant with prompt notice of requests and Chargebacks.

## **8. Chargebacks**

- 8.1** Merchant agrees to pay HPS the actual amount of any Transaction processed by HPS pursuant to this Agreement whenever any Card or Debit Transaction is reversed.
- 8.2** Merchant agrees to pay HPS any fees or fines imposed on HPS resulting from Chargebacks and any other fees or fines imposed with respect to or resulting from acts or omissions of Merchant.

**8.3** HPS agrees to mail or electronically transmit all Chargeback documentation to Merchant promptly at Merchant's address shown in the Application. Merchant is responsible for verifying its monthly statement and its daily deposit for Chargebacks and Chargeback handling fees pursuant to this Agreement. Merchant shall notify HPS in writing within forty-five (45) days after any debit or credit is or should have been affected. If Merchant notifies HPS after such time, HPS shall not have any obligation to investigate or effect any such adjustments. Any voluntary efforts by HPS to assist Merchant in investigating such matters after the 45 day notification has expired, shall not create an obligation to continue such investigation or any future investigation. Merchant must provide all information requested by HPS by the time specified in a request for information; failure to do so shall constitute a waiver by Merchant of its ability to dispute or reverse a Chargeback or other debit, and Merchant shall be solely responsible. If HPS elects, in its sole discretion, to take action on a Chargeback or other debit after the time specified to respond has expired, Merchant agrees to pay all costs incurred by HPS. Merchant agrees to pay HPS a processing fee for Sales Draft retrieval requests at HPS discretion.

## **9. Limitation of Liability: Due Care**

**9.1** Except as provided in section 9.4 hereof, HPS's sole liability to Merchant hereunder shall be to correct, to the extent reasonably practical, errors that have been caused by HPS, except that any claim by the Merchant relating to statement accuracy or amounts owed by HPS to the Merchant is waived unless presented within forty-five (45) days of statement date.

**9.2** No claim for damages for any performance or failure of performance by HPS under this Agreement shall exceed the Convenience Fee amount and any other fees or charges paid to HPS in connection with the Card Transaction that is the subject of the alleged failure of performance.

**9.3** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, REVENUES, AND BUSINESS OPPORTUNITIES. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. Without limitation of the foregoing, HPS shall not be liable to Merchant for delays in data transmission. Merchant acknowledges that any losses pursuant to this Agreement are commercial in nature.

**9.4** HPS MAKES NO WARRANTY WHATSOEVER REGARDING CARD AUTHORIZATIONS, DECLINES OR REFERRAL CODES, RESPONSES TO REQUESTS FOR AUTHORIZATION, PROCESSING, SETTLEMENT, OR ANY OTHER SERVICES PROVIDED BY OR ON BEHALF OF HPS HEREUNDER, AND HPS HEREBY DISCLAIMS ANY AND ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, and HPS shall have no liability to Merchant or any other person for any loss, liability or damage arising directly or indirectly in connection herewith. Without limitation of the foregoing, Merchant acknowledges that HPS has no liability or responsibility for the actions of any Card Scheme, Card Issuer or Cardholder.

**9.5** Neither Party shall be liable for delays in processing or other non-performance caused by such events as fires; telecommunications failures; equipment failures; strikes; riots; war; non-performance of vendors, suppliers, processors or transmitters of information; acts of God or any other causes over which the Party has no control.

## **10. Display of Materials: Trademarks**

**10.1** If permissible under state law, Merchant agrees to prominently display the promotional materials provided by HPS in its place(s) of business or on an eCommerce site whereby Card Scheme logos must prominently be displayed. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall fully comply with specifications contained in applicable Card Scheme operating regulations.

**10.2** Merchant shall not use any promotional materials or Marks in any way that suggests or implies that a Card Scheme endorses Merchant's products or services.

**10.3** Merchant agrees that it will discontinue use of any Mark of a Card Scheme wherever such Marks are displayed, including on the Merchant's website(s), once

- (a) the Agreement is terminated or expires or
- (b) Merchant discontinues acceptance of a Card or participation in a Card Scheme Program.

## 11. Term: Termination

- 11.1** This Agreement shall become effective upon acceptance of the first Merchant deposit by HPS and shall continue in effect for a term of thirty-six (36) months therefrom. Thereafter, the Agreement will automatically renew for additional twelve (12) month periods unless terminated by any party by giving ninety (90) days written notice prior to the end of any term, except that in case of an Event of Default by Merchant or as required by a Card Scheme, this Agreement may be terminated by HPS immediately, and HPS shall give Merchant written notice within ten (10) days thereafter.
- 11.2** In the event HPS fails to provide the Services as stated herein, prior to exercising any right of termination, Merchant must
- (a) notify HPS of such breach;
  - (b) give HPS a reasonable period to cure, depending on the nature of the breach. The parties shall agree on the duration of such reasonable period in writing; and if, HPS is unable to cure within such time, Merchant may terminate the Agreement subject to the terms herein.
- 11.3** If any of the following events shall occur (each an "Event of Default"):
- (a) Merchant shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement; or
  - (b) A reasonable belief by HPS that Merchant will constitute a risk to HPS by failing to meet the terms of this Agreement; or
  - (c) Material adverse change in the business, financial condition, business procedure or services of Merchant; or
  - (d) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to HPS; or
  - (e) irregular Card sales or credits by Merchant, Card sales substantially greater than the average ticket amount stated on Merchant's Application, excessive Chargebacks or any other circumstances which in the sole discretion of HPS, may increase the risk of Merchant Chargebacks or otherwise present a financial or security risk to HPS; or
  - (f) reasonable belief by HPS that Merchant is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s); or
  - (g) any voluntary or involuntary bankruptcy or insolvency proceedings involving Merchant, its parent or an affiliated entity, or any other condition that would cause HPS to deem Merchant to be financially insecure; or
  - (h) Merchants engages in any Outbound Telemarketing Transactions; or
  - (i) Merchant or any other person owning or controlling Merchant's business is or becomes listed in any Card Scheme's security reporting;

Then, upon the occurrence of any Event of Default, all amounts payable hereunder by Merchant to HPS shall be immediately due and payable in full.

- 11.4** In the event of termination, regardless of cause, Merchant agrees that (a) all obligations and liabilities of Merchant with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment transactions of Merchant in the process of being collected and deposited; and (b) it will discontinue all use of Marks of a Card Scheme or HPS.
- 11.5** Merchant agrees that all obligations incurred or existing under the terms of this Agreement as of the date of termination, shall survive such termination. After the termination or expiration of the terms of the agreement, Client shall discontinue using and shall remove all hyperlinks, signs, displays or other materials containing the name or logo of HPS and/or its suppliers.
- 11.6** Neither the expiration nor termination of this Agreement shall terminate the obligations, or rights of the parties pursuant to provisions of the Agreement, which by their terms are intended to survive or be perpetual or irrevocable.
- 11.7** If any Event of Default shall have occurred and be continuing, HPS may, in its sole discretion, exercise all of its rights and remedies under in equity, contract or applicable law, including, without limitation, those provided in this Agreement.



**11.8** The provisions governing processing and settlement of Card Transactions, all related adjustments, fees and other amounts due from Merchant and the resolution of any related Chargebacks, will continue to apply after termination of this Agreement until all Card Transactions made prior to such termination are settled or resolved. Upon termination of this Agreement, Merchant agrees to promptly send HPS all data relating to Card Transactions made to the date of termination.

## **12. Terminated Merchant File**

**12.1** If Merchant is terminated for any of the reasons specified as cause by Visa, MasterCard and Discover Network, HPS may report Merchant's business name and the names and other identification of its principals to the Terminated Merchant File. Merchant expressly agrees and consents to such reporting, and HPS shall have no liability to Merchant for any loss, expense or damage Merchant may sustain directly or indirectly due to such reporting.

## **13. Notices**

**13.1** All notices and other communication required or permitted under this Agreement shall be deemed delivered when mailed first-class mail, postage prepaid, addressed to the Merchant at the address stated in the Application and to HPS at the address set forth below, or at such other address as the receiving party may have provided by written notice to the other:

### **Heartland Payment Systems**

Attn: Customer Care  
One Heartland Way  
Jeffersonville, IN. 47130  
1 (888) 963-3600

### **Member Bank Sponsors**

#### **Issues Regarding Credit Cards**

##### **Barclay Bank**

125 South West Street  
Wilmington, DE 19801  
Phone #: 1 (201) 622-8990

##### **The Bancorp Bank**

409 Silverside Road, Suite 105  
Wilmington, DE 19809  
Ph #: 1 (302) 385-5000

##### **Wells Fargo Bank, N.A.**

1200 Montego  
Walnut Creek, CA 94598  
Phone #: 1 (925) 746-4167

#### **Issues Regarding Debit Cards**

##### **Bay Bank**

7151 Columbia Gateway Drive  
Suite A  
Columbia, MD 21046

## **14. Additional Terms**

**14.1 Truth of Statements:** Merchant represents to HPS that all information and all statements contained in the Application are true and complete and do not omit any information necessary to make such information and statements not misleading to HPS.

**14.2 Entire Agreement:** This Agreement constitutes the entire understanding of HPS and Merchant and supersedes all prior agreements, understanding, representations, and negotiations, whether oral or written between them.

**14.3 Amendments:** Except as otherwise provided herein, no provision of this Agreement may be waived, amended or modified except in writing signed by an authorized representative of each party.

- 14.4 No Waiver of Rights:** Any failure of a Party hereto to enforce any of the terms, conditions or covenants of this Agreement shall not constitute a waiver of any rights under this Agreement.
- 14.5 Section Headings:** All section headings contained herein are for descriptive purposes only, and the language of such section shall control.
- 14.6 Assignability:** Neither Party hereto may assign this Agreement directly or by operation of law, without the prior written consent of the non-assigning party, which consent shall not be unreasonably withheld, Either party may assign this Agreement to a parent, subsidiary, or affiliate without the other's consent. This Agreement shall be binding upon the parties hereto, their successors and permitted assigns. Any assignment without the prior written consent of the non-assigning party shall be void.
- 14.7 Damages:** In any judicial or arbitration proceedings arising out of or relating to this Agreement, including but not limited to these actions or proceedings related to the collection of amounts due from merchant, the providing party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts.
- 14.8 Relationship of the Parties:** Nothing contained herein shall be deemed to create a partnership, joint venture or, except as expressly set forth herein, any agency relationship between HPS and Merchant.
- 14.9 Severability:** If the performance by either party of any provision of this Agreement is determined to be unlawful or in violation of any state, federal or local statute, law, ordinance, regulation or rule, or of the rules of any Card Scheme, said party shall seek to cure the illegality or violation within thirty (30) days following the date that such party is first informed of such violation or illegality. If such cure is not affected within such thirty (30) days period, the illegal or violating provision shall be null and void, and this Agreement shall remain in full force and effect and the parties shall use their best efforts to agree upon legal and non-violating substituted provisions that will serve the intent of the parties.
- 14.10 Privacy Policy:** All financial and personal information about Merchant and a Merchant's vendors and suppliers, is considered confidential data. Merchant acknowledges and agrees that this information or other personal information will be used only in connection with the services provided by HPS and third parties designated by HPS to Merchant under the terms of this agreement and the performance of this Agreement. Notwithstanding the foregoing or anything else contained herein, Merchant information may be provided by HPS to any third party including but not limited to, Card Schemes, collection agencies, financial institutions or organizations, or merchant associations in the event of a default by merchant in any obligation under this agreement.
- 14.11 Governing Law:** This Agreement shall be construed and governed by the laws of the state of in which the government or public educational entity is located without regard to legal principles related to conflict of laws.
- 14.12 Jurisdiction & Venue:** Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and Merchant further waives any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.
- 14.13 No Third Party Beneficiary.** Under no circumstance, shall any third party be considered a third party beneficiary of Merchant's rights or remedies under this Agreement or otherwise be entitled to any rights or remedies of Merchant under this Agreement.
- 14.14 Changes:** HPS may change the terms of or add new terms to this Agreement at any time in accordance with applicable law. Any such changes or new terms shall be effective when notice thereof is given by HPS either through written communication or on its merchant website located at <https://infocentral.heartlandpaymentsystems.com>.
- 14.15 Public Statements.** Merchant shall obtain the prior written consent of HPS prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to HPS.

## 15. Optional Card Brand Fees

**Convenience Fee:** A fee charged to the Cardholder by the Merchant for a true convenience for accepting a credit or debit card. Examples of a “true convenience” are payment through the internet, mail order or phone order. All Card Schemes allow Merchants to charge a convenience fee. All Card Schemes must be charged equally. The Merchant is required to disclose the fee to the Cardholder and provide the Cardholder with the opportunity to cancel the Transaction, if the Cardholder does not want to pay the convenience fee. In addition to the foregoing,

- (a) Visa requires Merchants to have a brick and mortar location in order to be allowed to charge a convenience fee;
- (b) MasterCard requires processors to register any Government or Education merchant; and
- (c) AMEX requires that the convenience fee be shown as a separate charge on the Cardholder’s receipt for the goods or services.

**Surcharge:** A charge in addition to the initial amount of the sale on a credit card to cover the Merchant’s cost of acceptance. All Card Schemes allow surcharging. Visa, MasterCard and Discover require Merchants to register with the Card Schemes. The Merchant is required to disclose the fee at the entry of their establishment and at the point of sale. The cardholder must be given the opportunity to cancel the Transaction if they do not want to pay the surcharge fee. The amount of the charge cannot exceed the amount of the Merchant’s discount fee on Visa, MasterCard and Discover and is capped at 4%. The surcharge must appear on the sales receipt separately from the sales amount. All Card Schemes must be charged equally. Currently there are several states that prohibit surcharging. Merchants should check their state and local laws prior to initiating a surcharge.

**Service Fee:** Visa allows government and education Merchants to charge a different type of fee called a “service fee”. This fee is assessed for accepting payments for taxes, fees and fines for government MCCs and for tuition, room and board, lunch programs, etc. for education MCC Merchants. The service fee can be charged on credit and debit Transactions, in a face-to-face or card not present environment. The service fee must appear separate from the sales amount on the receipt. Merchants must be registered through Visa. Service fee must be disclosed prior to completion of the transaction, allowing the cardholder to cancel the Transaction if they do not wish to accept the service fee. MasterCard allows government and education merchants to charge “convenience fees” and has no separate “service fee” for these MCCs.

**Other Fees:** Handling fees and payment fees are allowed on all Card Schemes as long as these fees are charged on all payment channels; cash, checks, ACH, etc. These are not governed by the Card Schemes specifically. State and local laws may apply and merchants should ensure the fees are allowed in their area of business.

# GOVERNMENT AND PUBLIC EDUCATION ACH PROCESSING AGREEMENT TERMS & CONDITIONS

If you chose ACH processing on the Heartland Payment Systems Merchant Processing Agreement (the "Application"), this ACH Processing Agreement (the "Agreement") is a part of your Application. The "Effective Date" is the earlier of the date that HPS approved your Application or the date on which HPS processed your first ACH transaction.

1. **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings provided in the rules of the National Automated Clearinghouse Association, and any amendments that may be adopted from time to time. The following definitions shall apply for the purposes of this Agreement:
  - 1.1 **"ACH"** means the Federal Reserve Bank's Automated Clearing House, a funds transfer system, governed by the NACHA operating rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.
  - 1.2 **"EFT"** means Electronic Funds Transaction, electronic debits and credits processed through the ACH Network.
  - 1.3 **"Entries"** shall have the meaning provided in the Rules and shall also mean the data received from Merchant hereunder from which HPS prepares Entries.
  - 1.4 **"Initiation"** means the initial presentation by HPS of a transaction to Settlement.
  - 1.5 **"Merchant"** means the business customer that initiates ACH entries into the payment system according to an arrangement with a Receiver.
  - 1.6 **"Merchant Account"** means the commercial demand deposit checking account designated by Merchant for use in conjunction with ACH Services.
  - 1.7 **"NACHA"** means the National Automated Clearing House Association.
  - 1.8 **"ODFI"** means the bank acting as the Originating Depository Financial Institution as defined by NACHA Rules.
  - 1.9 **"RDFI"** means the Receiving Depository Financial Institution that receives ACH entries from the ACH Network and posts the entries to the Receiver's account.
  - 1.10 **"Receiver"** means the person or organization that has authorized a Merchant to initiate an ACH entry to the Receiver's account with the RDFI.
  - 1.11 **"Re-initiation"** or **"Re-presentment"** means the second or third attempt at Settlement by HPS of a previously Returned ACH transaction.
  - 1.12 **"Return"** means a Receiver transaction that is returned unpaid by either the Receiver's bank or the ACH Network.
  - 1.13 **"Returned Item Service Charge"** means the fee charged to Receiver as allowed by applicable law for a transaction that is returned unpaid by the Receiver's bank or ACH Network.
  - 1.14 **"Rules"** means the rules of the National Automated Clearinghouse Association (NACHA), and any amendments that may be adopted from time to time hereafter. Please refer to the following website for the Rules: <https://www.nacha.org/rules>
  - 1.15 **"Settlement"** means the movement of electronic information into the ACH Network under the ODFI sponsorship which results in the debiting or crediting of funds to designated bank accounts.
  - 1.16 **"Submit"**, **"Submitted"** and **"Submission"** means the Merchant's action of utilizing HPS's ACH Services for the purpose of processing a transaction.

2. **Entries and Related Warranties.** Merchant shall transmit only those types of Entries designated in the Application. Entries that are part of a payment transaction that involves a financial agency's office that is not located within the territorial jurisdiction of the United States must be identified using the International ACH Transaction (IAT) Standard Entry Class Code. With respect to each Standard Entry Class Code indicated by Merchant, Merchant shall comply with all requirements and warranties set forth in the Rules with respect to such Standard Entry Class Code.
3. **Security Procedures.** Merchant is strictly responsible to establish and implement security procedures to safeguard against unauthorized transmissions. Merchant warrants that no individual shall be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by HPS. If Merchant discovers that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify HPS within a reasonable time followed by written confirmation. The occurrence of unauthorized access shall not affect any transfers made in good faith by HPS prior to receipt of such notice and within a reasonable time after such notice.
  - (a) If HPS accepted the Entry in good faith with respect to such Entry, then with respect to a credit Entry, Merchant shall be obligated to pay HPS the amount of such Entry, and with respect to a debit Entry, Merchant shall maintain sufficient funds in the Merchant Account to fund the reversal of such Entry.
  - (b) If an Entry (or request for cancellation or amendment of an Entry) received by HPS was transmitted or authorized by Merchant, Merchant shall pay HPS the amount of any such credit Entry and shall maintain funds in the Settlement Account to fund the reversal of any debit Entry, whether or not that Entry was erroneous in any respect.
4. **Recording and Use of Communications.** Merchant and HPS agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party for any reasonable use which is in compliance with this Agreement.
5. **Processing Deadlines.** Merchant acknowledges that HPS has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and that HPS will process Merchant's ACH transactions within the constraints placed upon HPS.
6. **Rejection of Entries.** HPS may reject any Entry which does not comply with the requirements of this Agreement.
7. **Cancellation or Amendment by Merchant.** Merchant shall have no right to cancel or amend any Entry after its receipt by HPS. HPS shall use reasonable efforts to act on a request by Merchant for cancellation of a file prior to transmitting such file to the ODFI, but HPS shall have no liability if such cancellation is not effected. Merchant shall reimburse HPS for any expenses, losses, or damages HPS may incur in effecting or attempting to affect Merchant's request.
8. **Merchant Account.** Merchant agrees to immediately reimburse HPS for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by HPS. Merchant also agrees to authorize HPS to suspend Settlement of all funds to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if HPS or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.
9. **Returns.** For transactions provided for under this Agreement, unless otherwise provided herein, Returns for non-sufficient funds and uncollected funds will be electronically Re-initiated by HPS as applicable and allowed by current NACHA rules and regulations. Merchant agrees to be liable for all EFT items that are returned, dishonored, reversed or that cannot be collected through Receiver's account and that are not subsequently covered by debit against Merchant Account. In the event that funds in Merchant Account are not sufficient to cover Returns, Merchant shall immediately upon request from HPS, deposit sufficient funds in Merchant Account to cover such Returns. HPS may deduct or offset Returns against amounts to be paid Merchant for current or future ACH transactions. With regards to any Returns, Merchant shall promptly notify HPS if:
  - (a) a Receiver makes any payment to Merchant on said transaction;
  - (b) a Receiver returns Goods or Services in whole or in part which were paid by said transaction, or
  - (c) there is a dispute concerning the Goods or Services or amount of said transaction.
10. **Returned Item Service Charges.** Returned Item Service Charges will be assessed as allowed by applicable law.

**11. Account Reconciliation.** Entries transmitted by HPS shall be reflected on Merchant's periodic statement issued by HPS with respect to the Merchant Account or the Reserve Account, as applicable, pursuant to the Application between HPS and Merchant with respect to such account. Merchant agrees to notify HPS promptly of any discrepancy between Merchant's records and the information shown on any periodic statement. If Merchant fails to notify HPS of any discrepancy within one hundred twenty (120) days of receipt of a periodic statement containing such information, then Merchant shall be precluded from asserting such discrepancy against HPS and HPS shall not be liable for any other losses resulting from Merchant's failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement.

**12. Merchant Representations.**

- (a) With respect to each and every Entry initiated by Merchant, Merchant represents and warrants to HPS and agrees that Merchant shall initiate Entries only in compliance with the provisions of Rules,
- (b) Merchant agrees to assume the responsibilities of a Merchant under the Rules, including ensuring that all international payment transactions are properly labeled as IAT entries and include the appropriate data elements under the Rules, and Merchant makes the warranties and assumes the liabilities as provided in the Rules,
- (c) each person shown as the Receiver on an Entry received by HPS from Merchant has authorized the initiation of such Entry and the debiting or crediting of its account in the amount and on the Effective Entry Date shown on such Entry,
- (d) such authorization is operative at the time of transmittal or at the time of debiting or crediting by HPS as provided herein,
- (e) Entries transmitted to HPS by Merchant are limited to those types of Entries agreed to by HPS and Merchant,
- (f) Merchant shall perform its obligations under this Agreement in accordance with all applicable federal and state laws and regulations, including the sanctions laws administered by the Office of Foreign Assets Control ("OFAC"), and
- (g) Merchant shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of a credit Entry by the Receiving Depository Financial Institution to the Receiver provisional until receipt by the Receiving Depository Financial Institution of final settlement for such Entry.
- (h) Merchant accepts responsibility for compliance with the Rules and will reimburse HPS for any fees or penalties for which it is responsible.
- (i) Merchant specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the Receiving Depository Financial Institution shall be entitled to a refund from the Receiver of the amount credited and Merchant shall not be deemed to have paid the Receiver the amount of the Entry.

**13. Responsibilities.**

In the performance of the services required by this Agreement, HPS shall be entitled to rely solely on the information, representations, and warranties provided by Merchant pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. HPS shall be responsible only for performing the services expressly provided for in this Agreement, and, subject to the disclaimers and limits on HPS's liability set forth herein. HPS shall not be responsible for Merchant's acts or omissions, including without limitation the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Merchant or for the return of an Entry by such Receiver or Receiving Depository Financial Institution, and no such person shall be deemed HPS's agent.

**LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE THAT THE OTHER PARTY MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE OTHER PARTY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY THAT THE OTHER PARTY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM LOSS OF BUSINESS, PROFITS, OR SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM THE OTHER PARTY'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT. IN ADDITION TO THE FOREGOING, HPS'S LIABILITY UNDER THIS AGREEMENT FOR PROVEN AND DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR TO BE PAID BY MERCHANT TO HPS UNDER THIS AGREEMENT FOR A SIX MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.

14. **Interruption of Services.** Merchant acknowledges and agrees that HPS's provision of ACH services hereunder may be interrupted from time to time and that HPS shall have no liability whatsoever as a result of such an interruption or delay. Without limiting the generality of the foregoing provisions, HPS shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, loss of power, equipment or software error or malfunction, war, terrorist actions, acts of God, earthquakes, flood, embargo, riot, sabotage, labor shortage or dispute, emergency conditions or circumstances beyond HPS's control. From time to time HPS may need to temporarily suspend processing of a transaction (particularly an international ACH transaction) for greater scrutiny or verification, including, but not limited to, suspending processing to review for OFAC compliance in accordance with applicable OFAC guidance, and HPS shall be excused if this action causes delay in the settlement and/or availability of the transaction while review is in process. In addition, HPS shall be excused, while review is in process, from failing to transmit or delay in transmitting an Entry if such transmittal would result, in HPS's reasonable judgment, in violation of any rule or regulation of any U.S. governmental regulatory authority or NACHA Rule.
15. **Risk Mitigation.** In order to reduce the risk of loss to which HPS is subject under this Agreement, HPS may in its sole discretion establish such risk mitigation procedures as HPS deems necessary, including without limitation, requiring prefunding of credit Entries, delayed availability of funds to Merchant to cover returned debit Entries, and submission of unbalanced files (submission of a credit file for which HPS shall then create the offsetting debit file.)
16. **Inconsistent Name and Account Number.** Merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, posting of the Entry transmitted by HPS to the RDFI may be made by the RDFI on the basis of the account number supplied by Merchant, even if such account number identifies a person different from the named Receiver, and that Merchant's obligation to settle the amount of the Entry to HPS is not excused in such circumstances.
17. **Payment for Services.** Merchant shall pay HPS the charges for the services provided in connection with this Agreement, as set forth in the Application. HPS may debit the Merchant Account, or if necessary, the Merchant Reserve Account, for the amount of any such charges. All fees and services are subject to change upon sixty (60) days prior written notice from HPS to Merchant. In the event HPS changes the fees and services pursuant to this section, Merchant shall have the right to terminate this Agreement upon thirty days' notice anytime thereafter without penalty. The charges set forth in the Application do not include, and Merchant shall be responsible for payment of, any sales, use, excise, value added, utility or other similar taxes relating to such services, and any fees or charges provided for in the Account Agreements.
18. **Right to Audit.** Upon ten (10) business days' notice, Merchant shall permit HPS, and any regulatory authority having jurisdiction over HPS, to review Merchant's operations as they relate to compliance with this Agreement and the Rules, and to examine and copy any books, records, and source documents related thereto.
19. **Confidential Information.**
  - (a) In performing its obligations pursuant to this Agreement, each party may have access to and receive disclosure of certain confidential information about the other party, including but not limited to data and other information identifying or otherwise concerning HPS's consumers or customers, marketing representatives, marketing plan, methods, objectives and test results, and proprietary computer source code (hereinafter "Confidential Information"). HPS and Merchant each agree that it will use the Confidential Information of the other solely in the performance of its obligations pursuant to this Agreement. A party receiving Confidential Information may disclose such Confidential Information pursuant to a judicial or other governmental order, provided that such receiving party shall first provide the disclosing party with prompt notice prior to any such disclosure so that the disclosing party may seek other legal remedies to maintain the confidentiality of such Confidential Information, and the receiving party shall comply with any applicable protective order or its equivalent. The Confidential Information shall constitute "trade secrets" defined by applicable law. The parties also acknowledge that the restrictions on the disclosure of the Confidential Information set forth in this Agreement constitute efforts reasonable under the circumstances to maintain the secrecy thereof.
  - (b) Upon request or upon the termination of this Agreement, each party shall return to the other party all Confidential Information in its possession in hard copy or electronic form.
  - (c) HPS and Merchant acknowledge that to the extent Confidential Information is disclosed to any affiliate or third party the disclosing party shall have a written contract protecting the confidentiality of same and shall ensure that such affiliates and third parties use and disclose Confidential Information only as needed for purposes of this Agreement.
  - (d) During the term of this Agreement and any renewal, Merchant shall retain information and data as is necessary to demonstrate compliance with this Agreement and applicable law.

21. **Amendments.** From time to time HPS may amend any of the terms and conditions contained in this Agreement. Notice of such amendments shall be made in writing to Merchant and shall become effective thirty (30) days after written notice is given. Merchant may, at its sole discretion, terminate this Agreement, without fee or penalty, if it does not wish to accept the amendments to the Agreement.
22. **Notices.**
- (a) Except as otherwise expressly provided herein, HPS shall not be required to act upon any notice or instruction received from Merchant or any other person, or to provide any notice or advice to Merchant or any other person with respect to any matter.
  - (b) HPS shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in the APPLICATION. Such notice shall be effective on the second business day following the day of receipt by HPS.
  - (c) Notice of Receipt of Entry. Under the NACHA operating rules, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statement we provide to you.
  - (d) All notices, requests, and approvals required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as indicated in the APPLICATION, unless notified in writing of a change in address, and (iii) shall be deemed to have been given either when personally delivered or when sent by regular United States mail, in which event it shall be sent postage prepaid upon delivery thereof, or, if sent by a delivery service, telegram, facsimile, or e-mail, upon delivery thereof.
23. **Tapes and Records.** All diskettes, Entries, security procedures and related records used by HPS for transactions contemplated by this Agreement shall be and remain HPS's property. HPS may, at its sole discretion, make available such information upon Merchant's request. Any expenses incurred by HPS in making such information available to Merchant shall be paid by Merchant.
24. **Evidence of Authorization/Provision of Information.** Merchant shall obtain, or shall ensure that all applicable consents and authorizations required under the Rules are obtained and shall retain, or shall ensure that all applicable consents and authorizations are retained for two (2) years after they terminate. Within five (5) banking days of a request by HPS, Merchant shall provide HPS with any information requested pursuant to this Agreement or required to comply with the Rules.
25. **Term and Termination.** The Initial Term of the Agreement shall be for a period of three (3) years following the date of this Agreement. Thereafter, the Agreement will automatically renew for additional one (1) year terms unless either party provides to the other written notice of termination at least thirty (30) days prior to the end of the then current term of its intention not to renew the Agreement. HPS may terminate the Agreement immediately as required by the ODFI or as may otherwise be required by the Rules.
26. **Entire Agreement.** This Agreement is the complete and exclusive statement of the agreement between HPS and Merchant with respect to the subject matter hereof and supersedes any prior agreement between HPS and Merchant with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which HPS is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and HPS shall incur no liability to Merchant as a result of such violation or amendment. No course of dealing between HPS and Merchant shall constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between HPS and Merchant regardless of whatever practices and procedures HPS and Merchant may use.
27. **Non-Assignment.** Neither party may assign this Agreement or any of the rights or duties hereunder to any person without the other parties' prior written consent except that upon notice to the other party, either party may assign the Agreement to a parent, subsidiary, or affiliate without the other's consent.
28. **Waiver.** Either party may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the waiving party's rights with respect to any other transaction or modify the terms of this Agreement.



29. **No Third Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against HPS or Merchant hereunder.
30. **Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.
31. **Severability.** If any provision of this Agreement is held void or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and the void or unenforceable term shall be amended such that it is enforceable to the maximum extent permitted by law.
32. **Relationship of the Parties.** HPS and Merchant are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between them. Except as provided in this Agreement, HPS and Merchant each shall bear its own costs and expenses in connection with the performance of its obligations under this Agreement. Neither HPS nor Merchant will have the power to bind the other or incur obligations on the other's behalf without the other party's prior written consent.
33. **Governing Law and Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of residence of the government or public educational entity without regard to its choice of law provisions. The parties expressly consent and agree to the exclusive jurisdiction and venue of any Delaware state or federal court for all purposes in connection with any suit between the parties arising out of or relating to this Agreement.

**Addendum**  
**to**  
**Government and Public Education Credit/Debit Card Processing Agreement**  
**between**  
**Heartland Payment Systems, LLC.**  
**and**  
**Town of Henrietta**

**THIS ADDENDUM** (“Addendum”) to the Government and Public Education Credit/Debit Card Processing Agreement (the “Agreement”) is made as of the date of the last signature below (the “Effective Date”), by and between Heartland Payment Systems, LLC. (“HPS”), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and Town of Henrietta with its principal place of business at 475 Calkins Road, Rochester, New York 14623 (“Merchant”). HPS and Merchant are collectively from time to time referred to herein as the “Parties” with each being individually referred to as a “Party.”

**WHEREAS**, Merchant and HPS desire to modify the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Merchant and HPS agree as follows:

**1. TERMS & CONDITIONS**, Clauses 4.4, 6.1, 6.3, 10.1, 11.1, 11.2, 11.3, 11.4, 11.5, 14.7, 14.10, 14.12, 14.14 and 14.15 of the Agreement are hereby deleted in the entirety and are replaced with the following:

4.4 Merchant shall at all times maintain a direct deposit account (the “Account” or “DDA”), in good standing, at a bank that is a Receiving Depository Financial Institution (RDFI) of the Federal Reserve Bank ACH System or other ACH settlement network. Merchant agrees that all credits for collected funds shall be made automatically to the Account.

6.1 Merchant shall pay MuniBilling, pursuant to its contract with MuniBilling, for the services provided by HPS under this Agreement. All charges/fees/withdrawals will be paid to HPS by MuniBilling.

6.3 Reserved.

10.1 Use of promotional materials and use of any trade name, trademark, service mark or logo type (“Marks”) associated with Card(s) shall fully comply with specifications contained in applicable Card Scheme operating regulations.

11.1 Contemporaneous with this Agreement HPS and Merchant are entering into a Government and Public Education ACH Processing Agreement (“ACH Agreement”). This Agreement shall be effective upon the date that the latter of this Agreement and the ACH Agreement become fully executed by the parties hereto. The Initial Term of this Agreement shall be for a period of three (3) years. Thereafter this Agreement will automatically renew for additional one (1) year terms unless either party provides to the other written notice of

termination at least ninety (90) days prior to the end of the then current term of its intention not to renew the Agreement. In an Event of Default by Merchant or HPS, or as may be otherwise be required by a Card Scheme, however, this Agreement may be terminated upon ten days' notice by the non-defaulting party or the party giving notice of a right or obligation to terminate under a Card Scheme. If the ACH Agreement terminates for any reason, this Agreement and the Application shall be deemed terminated simultaneously.

11.2 In the event that a party is in breach of this Agreement, prior to exercising any right of termination, the non-breaching party must (i) notify the breaching party of such breach; (ii) give the breaching party a reasonable period to cure, depending on the nature of the breach. The parties shall agree on the duration of such reasonable period in writing; and if, the breaching party is unable to cure within such time, the non-breaching party may terminate the Agreement subject to the terms herein.

11.3 If any of the following events shall occur (each an "Event of Default"):

- (i) Merchant or HPS shall default in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this Agreement; or
- (ii) A reasonable belief by a party that the other party will constitute a risk by failing to meet the terms of this Agreement; or
- (iii) Material adverse change in the business, financial condition, business procedure or services of a party; or
- (iv) any information contained in the Application was or is incorrect in any material respect, is incomplete or omits any information necessary to make such information and statements not misleading to the other party; or
- (v) financial or security risk to the other party; or
- (vi) reasonable belief by a party that the other party is engaged in practices that involve elements of fraud or conduct deemed to be injurious to Cardholders, including, but not limited to fraudulent, prohibited or restricted Transaction(s); or
- (vii) any voluntary or involuntary bankruptcy or insolvency proceedings involving a party, its parent or an affiliated entity, or any other condition that would cause a party to deem the other party to be financially insecure; or
- (viii) Reserved.
- (ix) A party or any other person owning or controlling a party's business is or becomes listed in any Card Scheme's security reporting;

Then, upon the occurrence of any Event of Default, all amounts payable hereunder shall be immediately due and payable in full.

11.4 In the event of termination, regardless of cause, Merchant agrees that (a) all obligations and liabilities of Merchant with respect to any Sales Draft or Credit Voucher presented prior to the effective date of termination shall survive such termination and expressly authorizes HPS to withhold and discontinue the deposit to Merchant's Account for all Card and other payment transactions of Merchant in the process of being collected and deposited; and (b) it will discontinue all use of Marks of a Card Scheme or HPS. HPS may withhold deposits and payment transactions only in instances in which the Merchant is in default for a commercially reasonable amount of time. HPS shall provide notice to the Merchant.

11.5 Merchant agrees that all obligations incurred or existing under the terms of this Agreement as of the date of termination, shall survive such termination. After the termination or expiration of the terms of the agreement, Merchant shall discontinue using and shall remove all hyperlinks, signs, displays or other materials containing the name or logo of HPS and/or its suppliers.

14.7 Damages: In any judicial or arbitration proceedings arising out of or relating to this Agreement, including but not limited to these actions or proceedings related to the collection of amounts due from merchant, the prevailing party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts.

14.10 Privacy Policy: All financial and personal information about the parties and the parties' vendors and suppliers, is considered confidential data. The parties acknowledge and agree that this information or other personal information will be used only in connection with the services provided by HPS and third parties designated by HPS to Merchant under the terms of this agreement and the performance of this Agreement. Notwithstanding the foregoing or anything else contained herein, Merchant information may be provided by HPS to any third party including but not limited to, Card Schemes, collection agencies, financial institutions or organizations, or Merchant associations in the event of a default by Merchant in any obligation under this agreement.

14.12 Jurisdiction & Venue: Any suit, action or proceeding (collectively "action") arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions. In any such action, the parties waive trial by jury.

14.14 Reserved.

14.15 Public Statements. Each party shall obtain the prior written consent of the other party prior to making any written or oral public disclosure or announcement, whether in the form of a press release or otherwise, which directly or indirectly refers to the other party.

**2. ADDITIONAL TERMS & CONDITIONS,** The following clause should be deemed added to the terms of the Agreement as Clause 16:

**16. Confidential Information.**

(a) In performing its obligations pursuant to this Agreement, each party may have access to and receive disclosure of certain confidential information about the other party, including but not limited to data and other information identifying or otherwise concerning HPS's consumers or customers, marketing representatives, marketing plan, methods, objectives and test results, and proprietary computer source code (hereinafter "Confidential Information"). HPS and Merchant each agree that it will use the Confidential Information of the other solely in the performance of its obligations pursuant to this Agreement. A party receiving Confidential Information may disclose such Confidential Information pursuant to a judicial or other governmental order, provided that such receiving party shall first provide the disclosing party with

prompt notice prior to any such disclosure so that the disclosing party may seek other legal remedies to maintain the confidentiality of such Confidential Information, and the receiving party shall comply with any applicable protective order or its equivalent. The Confidential Information shall constitute "trade secrets" defined by applicable law. The parties also acknowledge that the restrictions on the disclosure of the Confidential Information set forth in this Agreement constitute efforts reasonable under the circumstances to maintain the secrecy thereof.

(b) Upon request or upon the termination of this Agreement, each party shall return to the other party all Confidential Information in its possession in hard copy or electronic form.

(c) HPS and Merchant acknowledge that to the extent Confidential Information is disclosed to any affiliate or third party the disclosing party shall have a written contract protecting the confidentiality of same and shall ensure that such affiliates and third parties use and disclose Confidential Information only as needed for purposes of this Agreement.

(d) During the term of this Agreement and any renewal, Merchant shall retain information and data as is necessary to demonstrate compliance with this Agreement and applicable law.

**3. ALL OTHER TERMS OF AGREEMENT REMAIN UNCHANGED.** This Addendum does not, and shall not be construed to, modify any term or condition of the Agreement other than those specific terms and conditions expressly referenced in this Addendum. Except as herein provided, the Agreement shall remain unchanged and in full force and effect. In the event of any inconsistency or discrepancy between the Agreement and this Addendum, the terms and conditions set forth in this Addendum shall control. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

**4. DEFINED TERMS RETAIN THEIR MEANING.** Except as otherwise modified herein, the capitalized terms used in this Addendum shall have the meaning specified in the Agreement.

**IN WITNESS WHEREOF**, each of the Parties has caused this Addendum to be executed on its behalf by its duly authorized representative.

**Town of Henrietta**

**Heartland Payment Systems, LLC.**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**Addendum**  
**to**  
**Government and Public Education ACH Processing Agreement**  
**between**  
**Heartland Payment Systems, LLC.**  
**and**  
**Town of Henrietta**

**THIS ADDENDUM** (“Addendum”) to the Government and Public Education ACH Processing Agreement (the “Agreement”) is made as of the date of the last signature below (the “Effective Date”), by and between Heartland Payment Systems, LLC. (“HPS”), a Delaware corporation, with its principal place of business at 10 Glenlake Parkway North East, North Tower, Atlanta, GA 30328-3473 and Town of Henrietta with its principal place of business at 475 Calkins Road, Rochester, New York 14623 (“Merchant”). HPS and Merchant are collectively from time to time referred to herein as the “Parties” with each being individually referred to as a “Party.”

**WHEREAS**, Merchant and HPS desire to modify the terms of the Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Merchant and HPS agree as follows:

**1. TERMS & CONDITIONS**, Clauses 8, 15, 17, 18, 19(d), 25 and 33 of the Agreement are hereby deleted in the entirety and are replaced with the following:

8. Merchant Account. Merchant agrees to immediately reimburse HPS for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by HPS. HPS may withhold deposits and payment transactions only in instances in which the Merchant is in default, only for a commercially reasonable amount of time and only in such amounts as may be reasonably necessary to protect HPS against monetary loss. HPS shall provide reasonable notice to the Merchant prior to withholding any deposits and payment transactions. If HPS or ODFI, in its sole opinion, reasonably deems itself at risk relative to any services performed under this Agreement, it may suspend those services.

15. Risk Mitigation. In order to reduce the risk of loss to which HPS is subject under this Agreement, and as deemed reasonably necessary, HPS may in its sole discretion establish such risk mitigation procedures, including without limitation, requiring prefunding of credit Entries, delayed availability of funds to Merchant to cover returned debit Entries, and submission of unbalanced files (submission of a credit file for which HPS shall then create the offsetting debit file.)

17. Payment for Services. Merchant shall pay MuniBilling, pursuant to its contract with MuniBilling, for the services provided by HPS under this Agreement. All charges/fees/withdrawals will be paid to HPS by MuniBilling.

18. Right to Audit. Upon ten (10) business days’ notice, each party shall permit the other party, and any regulatory authority having jurisdiction over the other party, to review its

operations as they relate to compliance with this Agreement and the Rules, and to examine and copy any books, records, and source documents related thereto.

19(d). During the term of this Agreement and any renewal, each party shall retain information and data as is necessary to demonstrate compliance with this Agreement and applicable law.

25. Contemporaneous with this Agreement HPS and Merchant are entering into a Government and Public Education Credit/Debit Card Processing Agreement (“Credit Card Agreement”). This Agreement shall be effective upon the date that the latter of this Agreement and the Credit Card Agreement become fully executed by the parties hereto. The Initial Term of this Agreement shall be for a period of three (3) years. Thereafter this Agreement will automatically renew for additional one (1) year terms unless either party provides to the other written notice of termination at least ninety (90) days prior to the end of the then current term of its intention not to renew the Agreement. HPS may terminate the Agreement immediately as required by the ODFI or as may otherwise be required by Rules, and shall provide reasonable prior notice to Merchant prior to such termination. If the Credit Card Agreement terminates for any reason, this Agreement and the Application shall be deemed terminated simultaneously.

33. Governing Law and Jurisdiction. Any suit, action or proceeding (collectively “action”) arising out of or relating to this Agreement shall be brought only in the courts of the state of which the government or public educational entity is located or in the applicable United States District Court. The parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all such actions, and Merchant further waives any claim that such action is brought in an improper or inconvenient forum. In any such action, the parties waive trial by jury.

2. **ADDITIONAL TERMS AND CONDITIONS.** This Addendum does not, and shall not be construed to, modify any term or condition of the Agreement other than those specific terms and conditions expressly referenced in this Addendum. Except as herein provided, the Agreement shall remain unchanged and in full force and effect. In the event of any inconsistency or discrepancy between the Agreement and this Addendum, the terms and conditions set forth in this Addendum shall control. This Addendum may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
3. **ALL OTHER TERMS OF AGREEMENT REMAIN UNCHANGED.** Except as otherwise modified herein, the capitalized terms used in this Addendum shall have the meaning specified in the Agreement.

Signatures on following page.

**IN WITNESS WHEREOF**, each of the Parties has caused this Addendum to be executed on its behalf by its duly authorized representative.

**Town of Henrietta**

**Heartland Payment Systems, LLC.**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



## ADDENDUM TO WEB APPLICATION SERVICES AGREEMENT

This Addendum to Web Application Services Agreement (“Addendum”) is entered into by and between the Town of Henrietta, 475 Calkins Road, Henrietta, New York, (“Customer”) and Crestline Software LLC d/b/a MuniBilling, 303-C Pisgah Church Road, Greensboro, NC 27455 (“MuniBilling”) pursuant to the terms set forth herein.

**WHEREAS**, MuniBilling and Customer entered into a Web Application Services Agreement, effective the date the customer actually goes live (“Agreement”), wherein Customer retained MuniBilling to render certain sewer billing services to Customer’s commercial accounts; and

**WHEREAS**, Customer is entering into an agreement (the “HPS Agreement”) with Heartland Payment Services (“HPS”) so that Customer may accept credit card and ACH funds transfer payments for sewer services; and

**WHEREAS**, HPS will charge fees for services provide under the HPS Agreement (“Fees”); and

**WHEREAS**, the HPS Agreement will entitle HPS to withdraw fees (“Fees”) from MuniBilling Account Number 2642264200, transit router/ ABA number 053000219 (the “MuniBilling Account”); and

**WHEREAS**, it is necessary for Customer to obtain permission from MuniBilling so that HPS may access the MuniBilling Account;

**NOW, THEREFORE**, in consideration of the foregoing premises it is agreed as follows:

1. **Agreement Remains In Effect.** All terms of the Agreement shall remain in full force and effect except as may be expressly modified or supplemented by the terms of this Addendum.

2. **Authorization for HPS to Access MuniBilling Account.** MuniBilling hereby authorizes Customer to grant permission to HPS to debit the MuniBilling Account for any and all Fees arising under the HPS Agreement. MuniBilling agrees to maintain the Munibilling account

in good standing and shall at all times maintain balances sufficient to cover such Fees for the duration of the Agreement. This authorization shall endure for the life of the Agreement and may not be revoked, except on the express written approval of Customer.

3. **Modification of Addendum.** This Addendum may be modified only by a written agreement signed by an authorized representative of Customer and MuniBilling subsequent to the effective date of this Addendum.

4. **Effective Date.** This Addendum shall be deemed effective on the date it becomes executed by all parties hereto.

5. **Incorporation of Recitals.** All recitals set forth in the opening paragraph and "Whereas" clauses of this Agreement, including all definitions therein, are deemed incorporated into the body of and substantive terms of this Agreement as if fully set forth herein.

**The Town of Henrietta**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

**Crestline Software LLC d/b/a MuniBilling**

Signature: 

By: NATHANIEL GENWRIGHT

Title: MANAGER

Date: 8/31/2017

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-172/2017

On Motion of  
Councilwoman Zinck

Seconded by  
Councilman Adair

WHEREAS, the Henrietta Town Board is required by the Compilation of Codes, Rules and Regulations of the State of New York to adopt a "Standard Work Day and Reporting Resolution for Elected and Appointed Officials" for retirement system purposes, and

WHEREAS, a number of Town officers and officials have submitted Records of Activities in accordance with the New York State Compilation of Codes, Rules and Regulations, and

WHEREAS, the New York State Comptroller form "Standard Work Day and Reporting Resolution for Elected and Appointed Officials," No. RS 2417-A, has been completed by the Town finance department in accordance with the subject officials' and officers' Records of Activities submitted to the Town, and is attached hereto and made a part hereof.

THEREFORE, BE IT RESOLVED, that the Henrietta Town Board hereby approves and adopts the attached Standard Work Day and Reporting Resolution for Elected and Appointed Officials, finding that the ROAs submitted reflect duties of the respective positions, and updating and establishing the standard work days set forth thereon.

BE IT FURTHER, RESOLVED, that the days worked indicated thereon be reported to the New York State and Local Employees' Retirement System based on the record of activities maintained and submitted by these officials to the Town.

BE IT FURTHER RESOLVED, that the Town Clerk of this Town shall post the Resolution on the Town website for thirty (30) days after its adoption, distribute this resolution to the subject Town officials, and file a certified copy of this Resolution with the Office of the State Comptroller within forty-five (45) days of its adoption.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried



Office of the New York State Comptroller  
 New York State and Local Retirement System  
 Employees' Retirement System  
 Police and Fire Retirement System  
 110 State Street, Albany, New York 12244-0001

## Standard Work Day and Reporting Resolution for Elected and Appointed Officials

**RS 2417-A**  
 (Rev. 3/14)

BE IT RESOLVED, that the Town of Henrietta / 30209 hereby establishes the following standard work days for these titles and will report the officials to the New York State and Local Retirement System based on time keeping system records or their record of activities.

Title	Standard Work Day (Hrs/day) Min. 6 hrs Max. 8 hrs	Name (First and Last)	Social Security Number (Last 4 digits)	Registration Number	Tier 1 (Check only if member is in Tier 1)	Current Term Begin & End Dates (mm/dd/yy-mm/dd/yy)	Participates in Employer's Time Keeping System (Yes/No-If Yes, do not complete the last two columns)	Record of Activities Result*	Not Submitted (Check only if official did not submit their Record of Activities)
<b>Elected Officials</b>									
					<input type="checkbox"/>				<input type="checkbox"/>
					<input type="checkbox"/>				<input type="checkbox"/>
<b>Appointed Officials</b>									
Zoning Board Member	6	Robert Barley	4585	6198114-8	<input type="checkbox"/>	1/1/2014-12/31/2018	NO	78	<input type="checkbox"/>
Planning Bd Attorney	6	William Walker	4994	3348098-8	<input type="checkbox"/>	1/1/2017-12/31/2017	NO	178	<input checked="" type="checkbox"/>

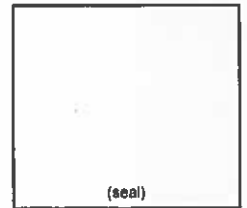
SEE INSTRUCTIONS FOR COMPLETING FORM ON REVERSE SIDE

I, Rebecca Wiesner, secretary/clerk of the governing board of the Town of Henrietta, of the State of New York, do hereby certify that I have compared the foregoing with the original resolution passed by such board at a legally convened meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ on file as part of the minutes of such meeting, and that same is a true copy thereof and the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Town of Henrietta on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Affidavit of Posting: I, Rebecca Wiesner, being duly sworn, deposes and says that the posting of the Resolution began on \_\_\_\_\_ and continued for at least 30 days. That the Resolution was available to the public on the \_\_\_\_\_.

- Employer's website at \_\_\_\_\_
- Official sign board at \_\_\_\_\_
- Main entrance secretary or clerk's office at \_\_\_\_\_



AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-173/2017

On Motion of  
Councilman Adair

Seconded by  
Councilman Breese

WHEREAS, for many years, the Town of Henrietta (the "Town") has proudly provided library services through the Town of Henrietta Public Library (the "Henrietta Library"), which serves approximately 1,000 people per day, and

WHEREAS, the current building housing the Henrietta Library is more than 35 years old, and, given the changes in library operations, technology, library design as well as the changing needs and preferences of patrons, the current building housing the Henrietta Library is no longer adequate to serve the needs of the Town, and

WHEREAS, given the significant cost of renovating the existing building, and given the expanded space needs of the Henrietta Library, the Town of Henrietta Library Board of Trustees as well as the Henrietta Library staff support and recommend the construction of a new building for the Henrietta Library, and

WHEREAS, the Henrietta Town Board, along with support from the Henrietta Library staff, Town staff and Town consultants have been examining and considering the construction of a new building for the Henrietta Library (the "Library Project"), but will consider moving forward only if the voters of the Town of Henrietta agree, and

WHEREAS, therefore, the Town Board seeks to submit to the voters of the Town of Henrietta at the upcoming 2017 November general election the question of whether the Town should proceed with financing the Library Project, and

WHEREAS, the Town estimates that the total maximum aggregate cost of the Library Project will approximate \$12,500,000.00, and

WHEREAS, the Town Board will authorize financing \$10,000,000.00 of the cost, subject to voter approval, while the remaining amount is planned to be paid as follows: \$2,500,000.00 out of the general fund, fund balance, grants, donations and/or other unanticipated revenues, and

WHEREAS, in connection with the construction of the Town of Henrietta Library, the landowner adjoining the Town of Henrietta Recreation Center has offered to transfer lands sharing a

boundary with the Town of Henrietta Recreation Center (and fronting on Calkins Road) (the "Lands") for no cash consideration, so long as the Town agrees to construct that public road, and

WHEREAS, due to the proximity of said Lands to the Town Recreation Center and Town Hall, the construction of the Library Project on said Lands would further the goal of creating a Henrietta "Town Center" to provide Town services in a central location, and

WHEREAS, because the Town was planning to create common vehicular access between the Town facilities as part of its Town Center goal, and because the owner has offered to transfer said Lands for no cash consideration, the Town seeks to acquire the Lands, and

WHEREAS, in preparation for consideration of the Library Project at the upcoming general election, the Town Board seeks to provide the public with additional information, including holding a public informational meeting on the Library Project on September 14, 2017 @ 6:00 p.m. at the Town Hall Main Meeting Room, and

WHEREAS, the Town, acting as lead agency pursuant to the State Environmental Quality Review Act ("SEQR"), completed its environmental review of the proposed Library Project on July 15, 2015, duly issued a negative declaration and determined that it would not result in any significant adverse environmental impacts, and, pursuant to the opinion of the Town's engineer and the Town Attorney, said SEQR review properly and sufficiently addresses any proposed environmental impacts of the currently proposed Library Project.

THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Henrietta, New York, that the Henrietta Town Board will seek to finance the construction of a Library Project, but only if the residents of the Town of Henrietta agree, all pursuant to a bond resolution to be hereinafter adopted.

BE IT FURTHER RESOLVED, that in preparation for consideration of the Library Project at the upcoming general election on November 7, 2017, the Town Board will provide the public with additional information, including holding a public informational meeting on the Library Project on September 14, 2017 @ 6:00 p.m. at the Henrietta Town Hall Main Meeting Room.

BE IT FURTHER RESOLVED, that, so long as the voters of the Town of Henrietta approve the financing of the Library Project, the Town of Henrietta is authorized to acquire the Lands comprising of approximately 2.791 acres, located at Lot R-3A of the Henrietta Library Subdivision, all pursuant to an agreement with the owner of the Lands, 2695 Commercial, LLC, which agreement is hereby approved.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried



August 31, 2017

Town of Henrietta  
Attn: Peter Minotti  
475 Calkins Road  
Henrietta, NY 14467

**Re: Henrietta Town Center – Technical Memo Regarding SEQRA Review**

Dear Mr. Minotti:

As requested, our office has reviewed the current plan for the 35,000 SF Library and 2,000 SF Coffee Shop as it relates to the original SEQRA determination completed in 2015 for the Town Center. At that time, the Town Center contemplated the development of a 30,000 SF Library on the subject site. Since that determination, there has not been a significant change in the scope of the Library. Minor changes include the increase in floor area from 30,000 SF to 35,000 SF, addition of the coffee shop and the addition of a right-in / right-out curb cut. We have completed a review of the changes as they relate to the 2015 State Environmental Quality Review Report prepared for the Henrietta Town Center. Our findings are provided below:

Section 1 – Introduction:

Minor modifications include a change to 124 Units in the Town Center North project and the addition of the 2,000 SF Coffee Shop. There is no substantial change with respect to potential Environmental Impact.

Section 2 – Compliance with Town's Comprehensive Plan:

The minor changes in scope do not have an impact to the projects compliance with the Town's Comprehensive Plan. All findings cited in the 2015 report remain relevant and accurate.

Section 3 – Character of the Community:

The addition of the Coffee Shop provides yet another land use which is compatible with the projects within the Town Center and enhances the character of the community. There is no substantial change with respect to potential Environmental Impact.

Section 4.0 Environmental Features:

4.1 Wetlands: The increase in building area, addition of the coffee shop and new curb cut will have no impact on wetlands, there are none on the site.

4.2 Creeks: The increase in building area, addition of the coffee shop and new curb cut will not result in any impact to the existing creek which hasn't already been considered as part of the initial SEQRA findings.

4.3 Floodplains and Floodways: The increase in building area, addition of the coffee shop and new curb cut will not result in any impact to the floodway or floodplain which hasn't already been considered as part of the initial SEQRA findings. All changes occur outside the limits of the floodplain.

4.4 Woodlots: The increase in building area, addition of the coffee shop and new curb cut will not result in any impact to woodlots, there are none present on site.

#### Section 5.0 – Traffic

The changes to the Library result in slightly more traffic generated by the development when compared to the 2015 proposal. However, as demonstrated by the 2017 Town Center Traffic Impact Study, the minor increase does not result in the need for mitigation in addition to those items identified in the 2015 findings. More specifically:

1. The installation of a signal light at Fair Avenue and Calkins Road continues to be a recommended improvement.
2. The realignment of Memorial Drive is not being considered at this time based on the location of the Rec Center and Library.
3. Fair Avenue is in the process of being dedicated in conjunction with the Town Center North Development.

The surrounding transportation system has adequate capacity to support the development as currently proposed. The proposed right in / right out curb cut on Calkins Road cut has been conceptually reviewed by the Monroe County Department of Transportation (MCDOT). MCDOT has indicated that it will be acceptable conditioned on all required DOT permits and subsequent requirements.

#### Section 6.0 – Utilities

6.1 Sanitary Sewer: The addition of the coffee shop will result in a minor increase (+/- 1,000 gpd) in the wastewater generated by the project. In 2016 a new trunk sewer overflow was installed as part of the Town Center North project. The new Trunk sewer provides additional capacity capable of supporting the project as currently proposed.

6.2 Water: The addition of the coffee shop will result in a minor increase (+/- 1,000 gpd) in the potable water required to serve the project. The existing water distribution system has more than ample capacity to support the minor increase in demand.

#### Section 7.0 - Drainage and Stormwater Management

The minor change in the scope of the project will not have a significant impact on stormwater management. All of the findings provided in 2015 continue to be applicable to the project. Stormwater Management will be provided in accordance with the NYSDEC General Permit.



Section 8.0 Landscaping and Lighting

8.1 Landscaping: The information provided and findings in the 2015 SEQRA report are not impacted by the minor change in project scope. There is no substantial change with respect to potential Environmental Impact.

8.2 Lighting: The information provided and findings in the 2015 SEQRA report are not impacted by the minor change in project scope. There is no substantial change with respect to potential Environmental Impact.

As summarized in the information below, the increase in floor area of the Library from 30,000 SF to 35,000 SF, addition of the coffee shop and the addition of a right-in / right -out curb cut do not change the findings provided in the 2015 SEQRA Report for Henrietta Town Center. Please contact me directly with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Jess Sudol". The signature is written in a cursive, slightly slanted style.

Jess D. Sudol, PE  
Vice President

JDS:paf

Cc: Donald Young, Esq.

## **Agreement to Transfer Real Property known as “Lot R-3A – Henrietta Library Subdivision at Calkins Rd.” in Henrietta, NY to Town of Henrietta**

Pursuant to this Agreement, 2695 Commercial LLC, (“**Owner**”) hereby agrees to transfer (the “**Transfer**”) to the Town of Henrietta (“**Town**”) ownership of certain property approximately 2.791 +/- acres in size and identified as the proposed Lot R-3A on the proposed “Henrietta Library Subdivision” plat dated August 2017 and attached hereto as **Schedule A** (“**Property**”), being a part of a 9.107 +/- acre parcel with tax account no. 176.05-1-59.2 (called “**Lot 3**”), upon the terms and conditions stated herein below.

1. **The Purchase Price.** Owner shall dedicate and convey the Property to the Town for no monetary consideration or otherwise, except as set forth herein.

2. **Conditions Precedent.** Transfer of the Property to the Town is expressly conditioned on the following:

a. The successful approval of a Town-wide referendum in November 2017 (“**Referendum**”) authorizing the construction of a public library building for and by the Town; and

b. That such Transfer shall prohibit use of the Property for any purpose other than as a public library, including but not limited to prohibiting use of the Property for commercial development, use as a Department of Public Works garage, or any other use inconsistent with that of a public library, except that such restrictions shall allow the inclusion of a coffee shop / restaurant use which shall be subordinate and accessory to the principle library use. The foregoing use restrictions shall be evidenced in the deed or restrictive covenant naming Owner, its successors and assigns, as beneficiaries and recorded in the Office of the Monroe County Clerk.

c. The Town shall take such steps necessary to authorize the construction by the Town the Roadway, as defined and described in Paragraph 3(b)(i) below.

d. The Transfer shall be conditioned upon the release, removal, and termination of any and all conditions of any and all municipal approvals which provide for the use or encumbrance of any or all of Lot 3 as parking to serve any third party, including but not limited to the Dome Arena project (by Roxbury Dome Partners LLC, Frank Imburgia, and/or their affiliates). This Transfer shall be further conditioned upon the termination of any and all agreements, covenants, easements, or other encumbrances providing for such parking rights and made pursuant to said aforementioned municipal approvals.

e. The Owner shall, with cooperation by the Town diligently take such actions as required to subdivide Lot 3 into three (3) parcels, which shall include the Property, and two additional lots (to be retained by Owner, all as described and shown on **Schedule A**), and to obtain any and all other approvals which may be required in connection with the subdivision of the land (with the Town waiving any Town fees in relation to such application(s), given the governmental purpose thereof).

3. **Detailed Agreement for Transfer.**

a. Within ten (10) business days following the approval of the Referendum, the Owner will provide the Town with a draft of an Agreement for transfer of title specifying additional details relating to the Transfer (the “Transfer of Title Agreement”).

b. The Transfer of Title Agreement shall contain the provisions of this Agreement and other provisions customarily included in such agreements, including, but not limited to, representations and warranties of the Owner concerning title to the Property, the ability of Owner to convey the Property and other reasonable representations. The Transfer of Title Agreement shall contain the following covenants, warranties and

representations of the Town which shall survive the Closing perpetually:

i. This Transfer shall be conditioned upon the Town taking all necessary steps to construct, at its expense, an east-west roadway connecting the Town's property to the west (now the Town Recreation Center) and Fair Avenue to the east, to be located in the southerly portion of the Property (the "Roadway"). The Town shall provide Owner with easements and Owner shall retain rights of ingress and egress and utility easements, over and through the Property, the Roadway and Fair Avenue satisfactory to Owner to service Owner's remaining property (including but not limited to the portions of the Lot 3 to be retained by Owner after the Transfer). The Town shall agree to commence construction of the Roadway within six (6) months of Closing and complete construction of the Roadway within eighteen (18) months of Closing.

ii. The Property shall be conveyed subject to any easements or encumbrances of record, with the exception of any mortgage lien or other monetary encumbrances, which shall be discharged of record at or prior to Closing, or as soon as commercially reasonable thereafter.

iii. c of Transfer shall contain the following condition: (a) if the Town fails to complete construction of the Roadway with eighteen (18) months of Closing (as the same may be extended as set forth herein); or b) if the Town fails to complete construction of the public library within twenty-four (24) months of Closing, then ownership of the Property shall revert and be returned to Owner at Owner's election and in Owner's sole discretion, upon Owner giving written notice to the Town Board of such election, and the Transfer shall become null and void.

If the Town has commenced but is otherwise unable to complete construction within the particular time periods set forth in subsection (a) or (b) of this Paragraph 3(b)(iii), and provided that the Town is diligently pursuing completion of said construction, the Town may give written notice to Owner prior to the end of the applicable time period in (a) or (b) of this Paragraph 3(b)(iii) to extend the time for completion of said construction for up to six (6) additional months. Should construction not be complete within the six (6) additional months, but construction is substantially complete, upon written notice, the Owner shall further extend the applicable time period for a reasonable amount of time allowing for completion.

In the event of the aforementioned reversion of ownership to Owner, the Town promptly agrees to take all steps and execute any and all documentation necessary to convey the Property back to Owner free and clear of any encumbrances recorded and/or any adverse environmental condition occurring after the date of Transfer to the Town. Should Town fail in any of its obligations as contained herein this Paragraph 3(b)(iii), and notwithstanding the Owner's right to revert of title of Property to Owner referenced herein, Owner reserves all rights and remedies with respect to enforcement of these provisions, including but not limited to the remedy of specific performance.

iv. The Transfer of Title Agreement shall contain a customary "AS-IS, WHERE-IS" provision whereby Town agrees to accept Transfer of the Property in its present condition, "As-Is, Where-Is, with all faults" subject to all its patent and latent defects, if any, with no representation or warranty by Owner as to its fitness, suitability, habitability or usability.

v. The Town shall pay all reasonable costs and expenses associated with the Transfer contemplated in this Agreement, including but not limited to all costs and expenses related to the subdivision of Lot 3, the Agreement, and the conveyance to the Town, including but not limited to Owner's legal and engineering fees.

vi. The Owner shall provide to the Town, for its review, a copy of any environmental tests results applicable to the Property and shall cooperate with the Town in its efforts to obtain a reliance letter, at the Town's expense, from an environmental engineer.

c. The closing of this Transfer ("**Closing**") shall take place on or before the date that is nine (9) months from the date of Execution of the Agreement. On the date of Closing, Owner shall, at Owner's expense, deliver to Town the items customarily required to transfer the Property to the Town.

4. **Access to the Property.** Upon execution of this Agreement, and for a period of sixty (60) days thereafter, Town and Town's employees, agents and contractors shall be allowed, at reasonable times and with reasonable notice, to enter upon the Property to inspect it and to conduct such tests as Town determines are necessary or desirable upon providing Owner with proof of liability insurance in the amount of \$1,000,000 naming Owner as additional insured. Notwithstanding, Town may not conduct any invasive testing (including but not limited any Phase II Environmental Assessment) without Owner's express, written consent, which may not be unreasonably withheld by Owner.

5. **Broker.** Owner and Town each represent and warrant that there are no brokers, finders, or other persons involved in this transaction who will be entitled to any commissions, fees or compensation arising out of the Transfer of the Property.

6. **Binding Effect of this Agreement.** This Agreement is intended as a binding expression of mutual intent of the parties as to the aspects of the Transfer described herein and is not an "agreement to agree" or anything less than a binding contract. The parties agree that while there are limited terms relating to this Agreement that have not been detailed herein, the material terms relating to the Transfer are set forth herein and thus this Agreement is a binding contract such that, should the referenced Referendum pass, the parties shall be obligated to complete the Transfer as set forth herein, including negotiating the additional details to be a part of the Transfer of Title Agreement.

7. **Choice of Law.** This Agreement is or shall be made and entered into in the State of New York, and shall be governed and interpreted exclusively by New York law, without giving effect to the principles of conflicts of laws. Each party hereby consents and submits to the jurisdiction of the state and federal courts situated in Monroe County, New York for the purposes of any claim, dispute, or action arising out of or relating to this Agreement or the Agreement, and hereby waives any defense of an inconvenient forum or proper jurisdiction.

8. **Termination.** Should the above-referenced Referendum fail to pass, or upon the mutual agreement of the parties, this Agreement shall terminate and the parties shall have no further obligations under the Agreement.

9. **Counterparts/Facsimiles.** This Agreement may be executed in any number of counterparts and/or facsimile versions and each counterpart and or facsimile shall constitute an original instrument, but all such separate counterparts and facsimiles shall constitute only one and the same instrument.

10. **Expiration of Agreement.** Unless Owner shall receive from the Town an executed copy of this Agreement by September 8, 2017 at 4:00 p.m., Eastern Daylight Savings Time (the "**Expiration Date**"), this Agreement shall terminate and will be null and void.

In witness whereof, the Town and Owner have executed this Agreement as of the date set forth above.

OWNER:

2695 COMMERCIAL LLC

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

[Town acceptance and Schedule A contained on following pages hereof.]

**Agreement**  
**Transfer of Real Property to Town of Henrietta**  
**Lot R-3A – Henrietta Library Subdivision Calkins Road, Henrietta, New York**

**Town Acceptance**

Accepted and agreed to this \_\_\_\_ day of \_\_\_\_\_, 2017

TOWN OF HENRIETTA:

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

Name: Jack W. Moore

Title: Supervisor

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-174/2017

On Motion of  
Councilman Breese

Seconded by  
Councilman Page

EXTRACT OF MINUTES OF MEETING OF THE TOWN BOARD  
ADOPTING BOND RESOLUTION

At a meeting of the Town Board of the Town of Henrietta, Monroe County, New York, held at the Henrietta Town Hall in Henrietta, New York, on the 6 day of September 2017:

PRESENT: Supervisor Jack W. Moore  
Councilwoman Janet B. Zinck  
Councilman M. Rick Page  
Councilman Kenneth Breese  
Councilman Scott Adair

ABSENT: None

Councilman Breese presented the following resolution and duly moved that it be adopted and was seconded by Councilman Page:

BOND RESOLUTION DATED SEPTEMBER 6, 2017 OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, NEW YORK, AUTHORIZING GENERAL OBLIGATION SERIAL BONDS TO FINANCE CERTAIN CAPITAL IMPROVEMENTS INVOLVING CONSTRUCTION OF A PUBLIC LIBRARY FACILITY, AUTHORIZING THE ISSUANCE OF BOND ANTICIPATION NOTES IN CONTEMPLATION THEREOF, THE EXPENDITURE OF SUMS FOR SUCH PURPOSE, AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Henrietta Town Board (the "Town") is considering authorizing the financing of the construction of a new building for the Town of Henrietta Public Library (the "Library Project"), so long as the electors of the Town of Henrietta agree, and

WHEREAS, the Town of Henrietta (the "Town"), acting as lead agency pursuant to the State Environmental Quality Review Act and the applicable regulations promulgated thereunder ("SEQR"), completed its environmental review of the proposed Library Project on July 15, 2015, duly issued a negative declaration and determined that the implementation of the type I action as proposed will not result in any significant adverse environmental impacts, and

BE IT FURTHER RESOLVED, by the Town Board of the Town of Henrietta, New York (hereinafter referred to as the "Town"), by the favorable vote of not less than two-thirds of all of the members of such Board, as follows:

Section 1. The Town of Henrietta shall undertake certain capital improvements consisting of construction of a new facility for the Town of Henrietta Public Library, including a building and various site and other incidental improvements in connection therewith and the acquisition of original furnishings, equipment, machinery or apparatus that may be required in connection therewith for such construction and Town use (hereinafter referred to as "purpose") at a maximum estimated aggregate cost of \$12,500,000.00, and the issuance of general obligation serial bonds in an aggregate principal amount not to exceed \$10,000,000.00 and bond anticipation notes in anticipation thereof (and renewals thereof) of the Town are hereby authorized to be issued to finance said purpose, which amount is hereby appropriated.

Section 2. The estimated maximum aggregate cost of said purpose, which may include preliminary costs and costs incidental thereto and costs of the financing thereof, is estimated to be \$12,500,000.00. The plan for financing of said purpose is to provide up to \$10,000,000.00 by issuance of bonds or bond anticipation notes as herein authorized, and to provide the balance of such maximum cost by the amount of available fund balance to be made available in addition to any donations, grants and/or unanticipated revenues, presently estimated to be up to an aggregate of \$2,500,000.00.

Section 3. It is hereby determined and declared that (a) such building shall be a class "A" building as defined in Subdivision 11 of Paragraph a of Section 11.00 of the Local Finance Law, and said purpose is one of the class of objects or purposes described in Subdivision 11 Paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is thirty (30) years, (b) the proposed maximum maturity of said bonds authorized by this resolution will be in excess of five years, (c) current funds required to be provided prior to the issuance of the bonds or notes herein authorized, pursuant to Section 107.00 of the Local Finance Law, to the extent applicable, if any, will be provided, (d) the notes herein authorized are not issued in anticipation of bonds for an assessable improvement, and (e) there are presently no outstanding bond anticipation notes issued in anticipation of the sale of said bonds.

Section 4. The bonds and notes authorized by this resolution shall contain the recital of validity prescribed in Section 52.00 of the Local Finance Law and such bonds and notes shall be general obligations of the Town and all the taxable real property in the Town is subject to the levy of *ad valorem* taxes to pay the principal thereof, and interest thereon, without limitation as to rate or amount, subject to applicable statutory limitations, if any, sufficient to pay the principal of and interest on said bonds and notes.

Section 5. It is hereby determined and declared that the Town reasonably expects to reimburse the general fund, or such other fund as may be utilized, not to exceed the maximum amount authorized herein, from the proceeds of the obligations authorized hereby for expenditures, if any, from such fund that may be made for the purpose prior to the date of the issuance of such obligations. This is a declaration of official intent under Treasury Regulation §1.150-2.

Section 6. The power to further authorize the sale, issuance and delivery of said bonds and notes and to prescribe the terms, form and contents of said bonds and notes, including, without

limitation, the consolidation with other issues, the determination to issue bonds with substantially level or declining annual debt service, all contracts for, and determinations with respect to, credit or liquidity enhancements, if any, and to sell and deliver said bonds and notes, subject to the provisions of this resolution and the provisions of the Local Finance Law, including without limitation, the authority to determine whether to accept bids electronically to the extent allowed by Section 58.00 of the Local Finance Law, is hereby delegated to the Town Supervisor, the Town's chief fiscal officer. The Town Supervisor and the Town Clerk or Deputy Clerk are hereby authorized to sign by manual or facsimile signature and attest any bonds and notes issued pursuant to this resolution, and are hereby authorized to affix to such bonds and notes the corporate seal of the Town of Henrietta.

Section 7. The faith and credit of the Town of Henrietta, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds and notes as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such obligations becoming due and payable in such year.

Section 8. After compliance with Section 9 hereof, this resolution shall be published in full by the Town Clerk of the Town of Henrietta together with a notice in substantially the form prescribed by Section 81.00 of said Local Finance Law, and such publication shall be in each official newspaper of the Town, in the manner prescribed by law. The validity of said bonds and bond anticipation notes issued in anticipation of the sale of said serial bonds, may be contested only if such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or the provisions of law which should be complied with, at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of such publication; or if said obligations are authorized in violation of the provisions of the Constitution.

Section 9. This financing authorized by this resolution, before becoming effective, shall be approved by the qualified voters of said Town at the general election to be held on November 7, 2017, pursuant to Section 10 below.

Section 10. The following notice of referendum, and the ballot proposition set forth therein, is hereby approved, and the Town Clerk is hereby authorized and directed to publish and post such notice pursuant to law:

#### NOTICE OF REFERENDUM AT GENERAL ELECTION

NOTICE IS HEREBY GIVEN that a referendum in and for the Town of Henrietta, Monroe County, New York, will be held at the general election on Tuesday, November 7, 2017, and the polls for such referendum shall be kept open for the purpose of voting on such proposition between the hours of 6:00 a.m. and 9:00 p.m., Prevailing Time, for the purpose of submitting the following described proposition for the approval of the qualified electors of said Town:

#### PROPOSITION

Shall the bond resolution adopted by the Town Board of the Town of Henrietta, New York, dated September 6, 2017, authorizing the issuance of up to \$10,000,000.00 of general obligation serial bonds of the Town to pay for the costs of certain capital improvements consisting of construction of a new facility for the Town of Henrietta



Public Library, including a building and various site and other incidental improvements in connection therewith and the acquisition of original furnishings, equipment, machinery or apparatus that may be required in connection therewith for such construction and Town use, at a maximum estimated aggregate cost of \$12,500,000.00; providing for the issuance of bond anticipation notes; determining that the period of probable usefulness and maximum permissible term of any borrowing is thirty years; and pledging the faith and credit of the Town to the payment of such debt obligations and the interest thereon, be approved?

The Town, acting as lead agency under the State Environmental Quality Review Act and the applicable regulations promulgated thereunder ("SEQR"), has completed its environmental review and, on July 15, 2015, has duly issued a negative declaration and has determined that the implementation of the type I action as proposed will not result in any significant adverse environmental impacts.

A copy of the bond resolution referred to in the aforesaid proposition is on file in the office of the Town Clerk of said Town, where the same may be examined by any interested persons during regular business hours.

Dated: September 6, 2017

BY ORDER OF THE TOWN BOARD OF THE TOWN OF  
HENRIETTA, MONROE COUNTY, NEW YORK

By: Rebecca B. Wiesner  
Town Clerk

The motion having been duly seconded, it was adopted and the following votes were cast:

Duly put to a vote:		
Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye
	Carried	

NOTICE PURSUANT TO LOCAL FINANCE LAW SECTION 81.00

The bond resolution published herewith was adopted on September 6, 2017, and the validity of the obligations authorized by such bond resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the Town of Henrietta is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the Constitution. The bond resolution was approved at the voter referendum on November 7, 2017 pursuant to Section 35.00 of the Local Finance Law.

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\_\_\_\_\_, Town Clerk  
Town of Henrietta, New York



AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON SEPTEMBER 6, 2017 AT 7:00 P.M.

RESOLUTION #15-175/2017

On Motion of  
Councilman Page

Seconded by  
Councilwoman Zinck

BE IT RESOLVED, that the following person be hired:

Grace Sinsebox

Recreation Department, effective September 6, 2017

- Seasonal Recreation Attendant (Soccer) @ \$9.70/hr.

Duly put to a vote:

Councilwoman Zinck	voting	Aye
Councilman Page	voting	Aye
Councilman Breese	voting	Aye
Councilman Adair	voting	Aye
Supervisor Moore	voting	Aye

Carried