

# Canandaigua Town Board

## Meeting Agenda for

### May 13, 2024

### Onnalinda Room - 5:00pm

#### **ZOOM MEETING INFORMATION:**

Please register in advance of this meeting using the following link:

[https://us02web.zoom.us/meeting/register/tZYqc-GtgTotH92PBu15q7\\_hCirh9kEvA6VV](https://us02web.zoom.us/meeting/register/tZYqc-GtgTotH92PBu15q7_hCirh9kEvA6VV)

After registering, you will receive a confirmation email containing information about joining the meeting.

*Please be aware all participants will be muted upon entry to the meeting and will only be able to speak after being acknowledged. Participants should use the "raise hand" feature or the chat box to request to speak. No screen sharing will be permitted. All meetings are recorded. Individuals will be removed from the meeting for inappropriate behavior.*

- Call To Order and Pledge of Allegiance
  - Pledge led by Councilperson Terry Fennelly
- Roll Call
  - Town Clerk Confirmation meeting was properly advertised
- Privilege of the Floor
- Resolutions and Motions

#### **PLANNING / PUBLIC WORKS**

- Resolution 2024-124: APPROVING NON-EXCLUSIVE LICENSE AGREEMENT TO THE CANANDAIGUA LAKE COUNTY SEWER DISTRICT FOR USE OF THE ELECTRICAL SYSTEM AND BACKUP GENERATOR AT THE TOWN'S BOOSTER PUMP STATION AT COUNTY ROAD 16

#### **RESOLUTION 2024-124: APPROVING NON-EXCLUSIVE LICENSE AGREEMENT TO THE CANANDAIGUA LAKE COUNTY SEWER DISTRICT FOR USE OF THE ELECTRICAL SYSTEM AND BACKUP GENERATOR AT THE TOWN'S BOOSTER PUMP STATION AT 3772 COUNTY ROAD 16**

**WHEREAS**, the Canandaigua Lake County Sewer District ("District") has requested a non-exclusive license agreement for the use of the electrical system and backup generator at the Town's booster pump station that is located at the City of Canandaigua's water treatment plant, which is located at 3772 CR 16 (Tax Map #112.00-1-18.100), in the Town of Canandaigua, County of Ontario, State of New York ("License Agreement") and

**WHEREAS**, the District has requested the License Agreement in connection with the Canandaigua Lake County Sewer District Supervisory Control and Data Acquisition System ("SCADA") implementation project for construction, maintenance, and operation of an approximately eighty-foot (80') communications tower, radio antennas, cabinets, associated cabling to house SCADA equipment, and perimeter security fencing; and

**WHEREAS**, the District desires to use a portion of the Property directly adjacent to the Town's Booster Pump Station and connect into the Booster Pump Station's electrical system to power the Communication Facility; and

**WHEREAS**, the Town of Canandaigua Highway and Water Superintendent has recommended that the Town Board grant the requested License Agreement; and

**WHEREAS**, the Town Attorney has negotiated the terms of the License Agreement with the Ontario County Attorney's Office; and

**NOW THEREFORE BE IT RESOLVED**, that the Town Board hereby approves the License Agreement; and

**BE IT FURTHER RESOLVED,** that the Town Supervisor is authorized and directed to execute the License Agreement on behalf of the Town.

- Executive Session: To discuss the employment history of a particular person or matters leading to the appointment/employment of a particular person. Town Manager Search
- Adjournment

1. Install ~2.5'x2.5', 80-foot tall self-supporting antenna tower and associated radio panel on the north end of the Booster Station. Tower will be supported by a 5'x5'x5' concrete foundation below grade.
2. Provide power to radio panel from the Booster Station. This includes the following:
  - a. Install in 20A circuit breaker in existing Panel LP2 located in the electrical room.
  - b. Route conduit within the building and penetrate the existing building exterior wall on the northwest corner. No conduit penetrations will be made through the metal roof.
  - c. Provide below grade conduit from the building exterior to the tower location.
  - d. All conduit routing will be coordinate with the City/Town prior to work commencing.
  - e. The anticipated power usage of the radio panel:

Item	Watts (W)	Kilowatts (kW)	Daily Run Time (Hrs)	kWH/Day	kWH/Year	\$/kWH	\$/Year
Radio Panel (radio, power supplies, heater, etc.)	275	0.275	24	6.6	2409	\$0.08	<b>\$192.72</b>

3. All site work will be restored upon completion of work.

Attached are 90% design drawings related to the proposed work at the Booster Station site. Please feel free to contact us if you have any questions.

Thanks,

**Matthew J. Czora** PE  
 Principal Engineer  
 Arcadis of New York, Inc.  
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<http://www.arcadis.com/> style='position:absolute;margin-left:0;margin-top:243.75pt;width:127.45pt;height:19.45pt;z-index:251659264;visibility:visible;mso-wrap-style:square;mso-width-percent:0;mso-height-percent:0;mso-wrap-distance-left:9pt;mso-wrap-distance-top:0;mso-wrap-distance-right:9pt;mso-wrap-distance-bottom:0;mso-position-horizontal:absolute;mso-position-horizontal-relative:text;mso-position-vertical:absolute;mso-position-vertical-relative:page;mso-width-percent:0;mso-height-percent:0;mso-width-relative:margin;mso-height-relative:margin' o:allowoverlap="f" o:button="t">

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by **Town of Canandaigua**, New York, having a mailing address of 5440 Route 5 & 20 West, Canandaigua, New York 14424, hereinafter referred to as "**Town**", and **Canandaigua Lake County Sewer District**, a special district of the County of Ontario, a municipal corporation created and existing under the laws of the State of New York, with offices at 20 Ontario Street, Canandaigua, New York 14424, hereinafter referred to as the "**District**".

## BACKGROUND

Town has constructed a water Booster Pump Station (the "Booster Pump Station") on property owned by the City of Canandaigua located at 3772 County Road 16 (Tax Map #112.00-1-18.100), in the Town of Canandaigua, County of Ontario, State of New York (the "Property"). Pursuant to a separate Lease Agreement between the District and City of Canandaigua (the "**Lease Agreement**"), District is permitted to use a portion of the Property in connection with the Canandaigua Lake County Sewer District Supervisory Control and Data Acquisition System ("SCADA") implementation project for construction, maintenance, and operation of an approximately eighty-foot (80') communications tower, radio antennas, control equipment, cabinets, associated cabling to house SCADA equipment, and perimeter security fencing (collectively, the "Communication Facility"). District desires to use a portion of the Property directly adjacent to the Town's Booster Pump Station and connect into the Booster Pump Station's electrical system to power the Communication Facility. Town desires to grant to District the non-exclusive right to use the Booster Pump Station electrical system and that portion of the Property over which the Town has access and control, in accordance with this Agreement.

The parties agree as follows:

- 1. PERMITTED USE.** To the extent it does not interfere with Town's use of the property, Town hereby grants the District a non-exclusive license to use its Booster Pump Station's electrical system, including emergency generator. The license shall include the following: (a) Within the Booster Pump Station (Panel LP2), the County shall be permitted to install a new 20A, 120V, IP circuit breaker to power the District's Communication Facility; (b) Town shall permit District access to that portion of the Property directly adjacent to the Booster Pump Station to the extent Town has access to and control over that Property; (c) District has the right to install and operate transmission cables from the tower structure and/or cabinets to the antennas, electric lines from the main feed to the Booster Pump Station or cabinets and communication lines from the main entry point to the Booster Pump Station or cabinets, and to make Property improvements, alterations, upgrades or additions, including to secure the Premises, appropriate for District's use ("District Changes") and, in doing so, District agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Booster Pump Station or related property; and (d) District will be allowed to make such alterations to Property over which Town has control in order to accomplish District's Changes or to ensure that District's Communication Facility is secure, operates properly, and complies with all applicable federal, state or local

laws, rules or regulations (collectively, the “Permitted Use”).

**2. TERM.**

- a. The initial license term will be five (5) years (“Initial Term”), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) annual anniversary of the Effective Date.
- b. This Agreement will automatically renew for four (4) additional five (5) year term(s); each five (5) year term shall be defined as the (“Extension Term”), upon the same terms and conditions unless the District notifies the Town in writing of District’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.
- c. If, at least sixty (60) days prior to the end of the fourth (4th) Extension Term, either Town or District has not given the other party written notice of its desire that this Agreement end at the expiration of the fourth (4th) Extension Term, then upon the expiration of the fourth (4th) Extension Term this Agreement shall continue in full force and effect upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“Annual Terms”) until terminated by any party by giving to the other written notice of its intention to so terminate at least (6) months prior to the end of any such Annual Term. If District continues to use the Booster Pump Station after the termination of this Agreement, such use will be deemed to extend the Term of this Agreement on a month-to-month basis (the “Holdover Term”), subject to the terms and conditions of this Agreement.
- d. The Initial Term, the Extension Term, Annual Terms, and the Holdover Term are collectively referred to as the Term (“Term”).
- e. Both Parties to this Agreement shall make reasonable efforts to ensure that this Agreement is coterminous with the related Lease Agreement between District and City of Canandaigua.

**3. LICENSE FEE / UTILITIES.** District shall pay Town an initial yearly License Fee of \$200 (“fee”), which fee shall compensate the Town for the power usage of the communication facility. The fee shall increase each and every year of the Term by 3.5%.

**4. APPROVALS.** Town agrees that District’s ability to carry out District’s Permitted Use is contingent upon the suitability of the Booster Pump Station’s electrical system for District’s Permitted use and District’s ability to obtain and maintain any governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by District for its installation and maintenance of the Communication Facility and related use of the Booster Pump Station, including without limitation applications for zoning variances, zoning ordinances, special use permits, site plan approval, and construction permits (collectively, the “**Government Approvals**”). Town authorizes District to prepare, execute and file all required applications to obtain Government Approvals for District’s Permitted Use under this Agreement and, with the exception of Government Approvals sought from Town, agrees to reasonably assist District with such applications and with obtaining and maintaining the Government Approvals. In addition, District shall have the right to initiate the ordering and/or scheduling of necessary utilities.

**5. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

- a. by either party on thirty (30) days' prior written notice, if the other party remains in default under Paragraph 13 Default and Right to Cure of this Agreement after the applicable cure periods;
- b. by District upon written notice to Town, if District is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility and/or related use of Booster Pump Station's electrical system as now or hereafter intended by District; or if District determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- c. by District upon written notice to Town for any reason, at any time prior to commencement of construction by District;
- d. by District for any reason, at any time, upon sixty (60) days' prior written notice to Town; or
- e. by the Town for any reason, at any time, upon sixty (60) days' prior written notice to the District.
- f. Within ninety (90) days after termination, District shall dismantle and remove all equipment from Town's Booster Pump Station and related facilities and restore the property to a condition similar to that which existed immediately prior to the installation of the District's equipment, normal wear and tear excepted.

**6. INSURANCE.**

- a. District is self-insured.
- b. Town shall provide District with proof of insurance in compliance with Schedule B attached hereto and made a part hereof.

**7. INTERFERENCE.**

- a. Town will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Booster Pump Station or its electrical system, if such use may adversely affect or interfere with the Communication Facility, the operations of District or the rights of District under this Agreement. Town will notify District in writing prior to granting any third party, other than the City of Canandaigua, the right to use the Booster Pump Station.
- b. Town will make reasonable efforts to refrain from using, or permitting its employees, districts, licensees, invitees or agents from using, the Booster Pump Station or its electrical system in any way which interferes with the Communication Facility, the operations of District or the rights of District under this Agreement. In the event that an interference occurs, or may potentially occur, the parties shall meet and work together to develop a reasonable alternative to the interference.
- c.

**8. INDEMNIFICATION.**

- a. Except to the extent attributable to the negligence of Town, its employees, agents

or independent contractors, District agrees to indemnify, defend and hold Town harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorney's fees and court costs but excluding real property or personal property taxes) arising directly from the negligent actions or failure to act of District or its employees or agents, or District's breach of any provision of this Agreement.. The duty to defend shall be triggered immediately upon notice to the District by the Town of the Town's receipt of a Notice of Claim, service of process or other demand or claim.

- b. Except to the extent attributable to the negligence of District, its employees, agents or independent contractors, Town agrees to indemnify, defend and hold District harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorney's fees and court costs but excluding real property or personal property taxes) arising directly from the negligent actions or failure to act of Town or its employees or agents, or Town's breach of any provision of this Agreement. The duty to defend shall be triggered immediately upon notice to the Town by the District of the District's receipt of a Notice of Claim, service of process or other demand or claim.
- c. Notwithstanding anything to the contrary in this Agreement, District and Town each waives any claims that each may have against the other with respect to consequential, incidental or special damages.
- d. The defense and indemnification obligations provided herein shall survive the expiration or termination of this Agreement, whether occasioned by this Agreement's expiration or earlier termination.

## **9. WARRANTIES.**

- a. District and Town each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.
- b. Town represents and warrants that: (i) Town is authorized to use the Property occupied by the Booster Pump Station and related equipment and utilities and solely owns the Booster Pump Station structure; (ii) such Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect District's Permitted Use and enjoyment of the Premises under this Agreement; and (iii) Town's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Town.

## **10. ACCESS.** To the extent that it does not interfere with Town's use or operation of the Booster Pump Station, Town grants District any and all rights of access over any portion of the Property controlled by Town necessary for District to carry out its rights and obligations under this Agreement.

**11. REMOVAL/RESTORATION.** All equipment or improvements installed by District to connect the Communication Facility to the Booster Pump Station electrical system will be and remain District's personal property and, at District's option, may be removed by District at any time during the Term. Within one hundred fifty (150) days of the termination of this Agreement, District will remove all of the District's above and below ground improvements and utilities related to the Permitted Use under this Agreement and District will restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond District's control excepted.

**12. MAINTENANCE.** District will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Town will maintain and repair the Property occupied by the Booster Pump Station and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

**13. DEFAULT AND RIGHT TO CURE.**

- a. It shall be deemed a default by District and a breach of this Agreement if District fails to perform any term or condition under this Agreement within forty-five (45) days after receipt of written notice from Town specifying the failure. No such failure, however, will be deemed to exist if District has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of District. If District remains in default beyond any applicable cure period, Town will have the right to exercise any and all rights and remedies available to it under law and equity.
- b. It shall be deemed a default by Town and a breach of this Agreement if Town fails to perform any term, condition or beach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from District specifying the failure. No such failure, however, will be deemed to exist if Town has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Town. If Town remains in default beyond any applicable cure period, District will have the right to exercise any and all rights available to it under law and equity, including the right to cure Town default and to deduct the costs of such cure from any monies due to Town from District under this Agreement.

**14. ASSIGNMENT/SUBLEASE.** District shall not assign, sell or transfer its interest under this Agreement without the approval or consent of Town. Upon any assignment, transfer or sale of the Communication Facility, and upon notification to Town of such assignment, transfer or sale, District will be relieved of all future performance, liabilities and obligations under this Agreement. The District shall not assign, sublet, or otherwise allow the Communication Facility to be used to or by any third party for any commercial purposes, including but not limited to commercial cellular communications providers or their agents, without prior Town approval. The Town shall be made a party to and



beneficiary of any such sub-lease. Any approval by Town required by this paragraph shall not be unreasonably withheld, conditioned or delayed.

- 15. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows:

If to District: 20 Ontario Street, Canandaigua, NY 14424  
Attention: County Attorney

With a copy to: 2962 County Road 48, Canandaigua, NY 14424  
Attention: Commissioner of Public Works

If to Town: 5440 Route 5 & 20 West, Canandaigua, NY 14424  
Attention: Town Supervisor

With a copy to: 5440 Route 5 & 20 West, Canandaigua, NY 14424  
Attention: Highway Superintendent

The parties hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

- 16. SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by any party on ten (10) business days' prior written notice to the other parties hereto.

- 17. CASUALTY.** If any part of the Communication Facility, Booster Pump Station, or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in District's sole determination, then District may terminate this Agreement by providing written notice to the Town, which termination will be effective as of the date of such damage or destruction. Upon such termination, District will be entitled to collect any insurance proceeds payable to District on account thereof. If notice of termination is given, or if District undertakes to rebuild the Communication Facility, Town agrees to use its reasonable efforts to permit District to use the Booster Pump Station electrical system to support any temporary transmission and reception facilities on the Property until such time as District is able to secure a replacement transmission location or the reconstruction of the Communication Facility is completed.

- 18. WAIVER OF LIENS.** Town waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this

Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Town consents to District's right to remove all or any portion of the Communication Facility or related improvements from time to time in District's sole discretion and without Town consent.

## **19. MISCELLANEOUS.**

- a. **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Town and an authorized agent of the District. No provision may be waived except in a writing signed by all parties.
- b. **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.
- c. **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.
- d. **Governing Law.** This Agreement will be governed by the laws of the state of New York.
- e. **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination for consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Town and District.

**IN WITNESS WHEREOF**, the parties have caused the Agreement to be effective as of the last date written below.

**TOWN OF CANANDAIGUA**

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

Print Name: \_\_\_\_\_

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

**CANANDAIGUA LAKE COUNTY SEWER DISTRICT**

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

Print Name: \_\_\_\_\_

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

**[ACKNOWLEDGEMENTS APPEAR ON THE NEXT PAGES]**