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February 10, 2023

Town Board and Supervisor  
Town of Clifton Park, New York  
c/o Mark Heggen, Town Comptroller  
One Town Hall Plaza  
Clifton Park, NY 12065

Re: **Agreed-upon Procedures (AUP)**

Dear Mark:

As detailed in our engagement letter dated September 2, 2022, I have completed the procedures for which the Town of Clifton Park, New York (the "Town") requested and/or were deemed necessary during the process of the engagement. This report details each step of the process and my findings.

Overview:

In general, the Town requested that I perform an Agreed Upon Procedures Engagement (AUP) regarding the Highway Department's permit process to determine if proper procedures are being followed. The initial review period was from the current Highway Superintendent's first day of employment in that capacity through the date of this report. It was noted during the process that due to the volume of permits and the time necessary to review, testing would focus primarily on 2019 through 2022 with additional items to be tested as deemed necessary.

Step 1 - Interview:

I interviewed the Highway Superintendent on December 13, 2022 at his office located at 639 Clifton Park Center Road. The main focus of this interview was to determine the current process at the Highway Department for permits that deal with the following activities:

- Application for Permit to Cut/Excavate Town Roads
- Permit for Construction within the Town Road Right-of-Way (ROW)
- Residential Driveway/Culvert Installation Permit

We discussed the permit process from application to approval and I noted that each of the above has a standard permit form along with instructions for the applicant to follow. In general the Town requires the application to detail the work to be completed with a drawn sketch, picture or engineering plans, proof of insurance coverage and a check for \$500. It was noted this check acts as a deposit for any damage which may be incurred during the work to be completed. No check is required for Residential Driveway/Culvert Installations.

It was noted that a separate permit fee arrangement was adopted in 2021 for Greenlight Networks and is included within the scope of this engagement.

### Step 1 - Findings:

During a cursory review of the permits listed above and Section 176-3 through 176-10 of the Town Code (copy enclosed), I noted differences as follows:

1.
  - Town Code Section 176-3 (B) states “The fee for a permit shall be \$150, payable to the Clifton Park Highway Department”; except
  - The permits to Cut/Excavate Town Roads and Construction within the ROW both list the permit fee as \$500 which will be returned within 1 year after completion of the approved work and repairs to original state.
2.
  - Town Code Section 176-5 (A) states “Applications for permits shall expire in 90 days”; except
  - The permits to Cut/Excavate Town Roads and Construction within the ROW both list the expiration at 60 days on the face and 90 days in instructions.
3.
  - Town Code Section 176-6 states “the applicant should provide a certificate of insurance of a duly authorized insurance company, in the sum of \$1,000,000 designating the Town a named insured”; except
  - Although listed at \$1,000,000, the permits to Cut/Excavate Town Roads and Construction within the ROW both differentiate between bodily injury coverage and property damage where the Town Code does not specify.

Step 2 - Testing: Once the initial interview was completed and I had obtained a general understanding of the process, I requested that permits and supporting documentation were provided for review. Due to the discrepancies noted above between the Town Code and Permit Applications, I reviewed the permits for the following criteria:

1. Was the permit approved or denied within a reasonable time frame (I utilized 30 days as reasonable based on professional judgment); and
2. Did the applicant provide plans including a sketch, picture and/or engineering plans to detail the work to be performed; and
3. Did the applicant provide proof of insurance coverage as necessary; and
4. Did the applicant provide a \$500 deposit (or alternate fee), if required?

### Step 2 - Notes:

During the interview process it was noted that there is no formal detail of the permits which are processed at the Highway Department other than an excel sheet and this tracking started in 2021 for only National Grid. Since there is no formal record of the actual permits which were applied for and approved or denied, I was unable to reasonably determine the population to test. All items tested were those provided by the Highway Superintendent therefore I could not reasonably ascertain

whether permits could be lost, misplaced or intentionally withheld from review. The reader should note there was no inherent assumption that items requested were not provided.

During the testing process it was also noted that the Town Comptroller did not start receiving deposit checks from the Highway Department until the 2021 year. While it is not required, it appears that check copies started to be retained in some of the files but varied from year to year. Absent a copy of the deposit check or physical deposit with the Town Comptroller, I would have considered this an exception.

Step 2 - Findings: During the permit testing I tested the following number of permits which was equal to 100% of the permits I was provided, except as detailed below. 3 permits on the original list from 2022 were not provided for review despite several requests.

- 2017 - 9
- 2018 -13
- 2019 - 11
- 2020 - 6
- 2021 - 21
- 2022 - 42
- Total - 102

It was noted that permits applications from National Grid before 2021 were on a form internal to their company and entitled “Permission to Excavate”. Based on this form it does not appear that the full Town Permit Forms were utilized so I modified the test work to only verify if the time between the application date and the acceptance or denial date was within 30 days. This sample was comprised of 22 permits from 2019 and 8 from 2020 and are not included in the totals above. I did not test the “Permission to Excavate” forms prior to 2019 due to volume of the permits and the fact these were not utilizing the Town’s prescribed forms.

Of the testing criteria listed in “Step 2 - Testing”, I noted the following exceptions. Exceptions were deemed to be items for which I could not arrive at an affirmative response.

1. Of the permits tested, 20 were approved in excess of 30 days from the time the permit was applied for. The dates indicated on the permits were those which were used for testing as there was no other source document present to verify. I noted in the majority of exceptions that these were stamped “Received” with a date differing widely from the date marked on the application. I noted 7 of these permits were from National Grid, the 2019 year and via the “Permission to Excavate” form as noted above. The reader should note I was provided with no standard time for which the application should be approved, rather I utilized a reasonable time based on professional judgment. Based on the volume and complexity of some permits a reasonable person could justify an approval period in excess of 30 days on a case by case basis.
2. Of the permits tested I noted 11 which did not have detailed plans including sketches, pictures or engineering plans.
3. Of the permits tested I noted 23 which did not have proof of insurance within the supporting documentation within the permit file.
4. Of the permits tested I noted 32 which either did not have a copy of the check, had no deposit on file with the Comptroller and/or made no mention otherwise of receipt of a check.

Of the 32 exceptions noted, 8 permit folders have the original uncashed check still present in the file.

From 2016 to 2022 the Town has received 35 deposit checks for the above types of permits with virtually all received after 12/1/21. 18 sample items were for Residential Driveway Permits which do not have an applicable fee.

Step 3 - Interviews:

As part of this engagement I also inquired of the Town's largest permit applicants as to their experiences during the permit process. These interviews took place in Dec 22/Jan 23, were approached objectively and I asked the applicants to detail both positive and negative experiences.

Step 3 - Results:

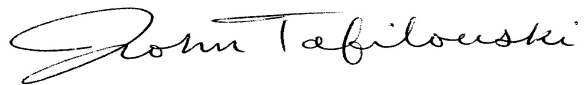
Respondent 1: First respondent stated that they currently have in excess of 40 permits open for which they have not received a response for 3-4 months in some cases. In general they reported that communication with the Highway Superintendent is difficult to nonexistent at times. They reported no personal issues and the interactions they have with the Superintendent are productive but the lack of communication is a major issue delaying the work they need to do.

Respondent 2: Second respondent stated that their interactions with the Highway Superintendent have been positive and they felt the time to approve their permits has been reasonable within the parameters they have experienced with other municipalities. They have experienced no major delays which they felt I needed to know about.

I want to thank the Town and the individuals involved in this process for their cooperation during the engagement. Please feel free to reach out to me with any questions, comments or concerns involving the process or this report.

Very truly yours,

**CUSACK & COMPANY CPA'S, LLC**



John J. Tafilowski, CPA  
Engagement Partner

ARTICLE II  
**Street Opening Permits**  
[Adopted 3-12-2012 by L.L. No. 6-2012]

**§ 176-3. Permits required; fee; transferability.**

- A. No person, other than a duly authorized Town officer or employee, shall make any openings or remove any pavements or paved trails in any street, avenue, alley, curb or public place in the Town of Clifton Park without a permit from the Superintendent of the Highway Department.
- B. The fee for a permit shall be \$150, payable to the Clifton Park Highway Department.
- C. Permits issued hereunder shall not be transferable.

**§ 176-4. Public notification of street closing.**

- A. Whenever a street or a portion of a street is to be closed to traffic or parking is to be prohibited for eight or more hours on one day or over a period of several days, the Superintendent may require, as a condition of the issuance of a permit under § 176-5, a program of public notification which may include the following:
  - (1) Notification of scheduled work in the public service section of a local newspaper of general circulation in advance of the commencement of such work.
  - (2) Direct contact with residents on affected street through circular or leaflet.
  - (3) Posting of scheduled work on the Town's website as appropriate.
  - (4) Signage at the work site.
- B. Notification should include expected date and time of commencement and completion of work, hours that the street shall be closed to traffic, the date and times temporary parking restrictions will be in effect and the availability of alternate routes, if applicable.

**§ 176-5. Application for permits.**

- A. Application for a permit shall be made to the Superintendent of the Highway Department on provided forms, which shall describe the location, number, purpose and size of the openings to be made, the kind of pavement or paved trail to be removed, the time when such openings are desired and the length of time the openings will remain open, together with such other information regarding the work as the Superintendent of the Highway Department may require. Applications for permits shall expire in 90 days.
- B. Emergency procedure. In cases of a service emergency, permit applications can be faxed or delivered to the Superintendent of the Highway Department within 24

hours after a pavement opening, or the next business day.

**§ 176-6. Insurance.**

Before a permit is granted, the applicant shall provide a certificate of insurance of a duly authorized insurance company, in the sum of \$1,000,000 designating the Town as a named insured and evincing coverage to indemnify and save harmless the Town of Clifton Park from all loss, damage, cost and liability whatever which the Town may sustain or incur by any reason arising out of the work performed or to be performed.

**§ 176-7. Closing and repavement.**

The closing and repavement shall thereafter be performed in a consistent with specifications published by the Superintendent of Highway Department. The Superintendent shall be notified when repavement operation is complete, and an opportunity for inspection provided.

**§ 176-8. Maintenance; subsequent repairs.**

- A. A person authorized to open a street or paved trail pursuant to the provisions hereof (the permittee) shall have a continuing duty to keep such area free from settlement or other defects caused by said openings for a period of one year following restoration and shall, when necessary, repair and restore such area to a condition satisfactory to the Highway Department.
- B. If a permittee fails to properly repair any pavement openings as directed, after written notice thereof from the Highway Department, the Highway Department shall have such repairs made, which shall be charged against the permittee.
- C. Nothing contained herein, however, shall prevent or preclude the Highway Department from taking whatever steps may be necessary, with or without notice, when emergency or otherwise dangerous conditions exist.
- D. In cases where pavement was removed or opened for the purpose of providing an infrastructure connection to any building or real property, and the permittee has failed to properly repair pavement openings as directed, the owner of the property for whom the pavement was removed shall ensure that pavement be restored or repaired consistent with this article.
- E. Failure to properly restore pavement openings shall be grounds for the withholding of additional permits under this chapter.

**§ 176-9. Fee exemption.**

Permits shall be required for street openings by or on behalf of the Clifton Park Water Authority, and for Town sewer operations and for private contractors operating in connection therewith; however, no permit application fee shall be charged.

**§ 176-10. Promulgation of rules and regulations.**

The Superintendent of the Highway Department is hereby authorized to promulgate and amend a fee schedule and additional rules, regulations and specifications necessary to supplement and effectuate the purpose and intent of this article.